

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . May 27, 2015  
Debtor. . 1:38 p.m.  
 . . . . .

HEARING RE. THIRTEENTH OMNIBUS OBJECTION TO CERTAIN CLAIMS,  
FIFTEENTH OMNIBUS OBJECTION TO CERTAIN CLAIMS,  
SIXTEENTH OMNIBUS OBJECTION TO CERTAIN CLAIMS,  
SEVENTEENTH OBJECTION TO CERTAIN CLAIMS,  
STATUS CONFERENCE ON (DOCKET #4874) OBJECTION TO CLAIM OF  
COALITION OF DETROIT UNIONS, STATUS CONFERENCE ON  
(DOCKET #4876) OBJECTION TO CLAIM OF MICHIGAN AFSCME  
COUNCIL 25 AND ITS AFFILIATED DETROIT LOCAL  
BEFORE THE HONORABLE THOMAS J. TUCKER  
UNITED STATES BANKRUPTCY COURT JUDGE

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                         IRMA INDUSTRIUS  
                         PAMELA BOOKER  
                         MARIO ROSS  
                         RICHARD HALL  
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1           THE CLERK: This Court is now in session. The  
2 Honorable Thomas J. Tucker is presiding. You may be seated.  
3 The Court calls the case of the City of Detroit, Michigan,  
4 Case Number 13-53846.

5           THE COURT: All right. Good afternoon to everyone.  
6 Let's have entries of appearance starting with those in the  
7 courtroom and starting there with the debtor, city.

8           MR. IMBROGNO: Your Honor, Leah Imbrogno from Foley  
9 & Lardner for the City of Detroit.

10          MS. DOLCOURT: Good afternoon, your Honor. Tamar  
11 Dolcourt of Foley & Lardner on behalf of the City of Detroit.

12          MR. SWANSON: Good afternoon, your Honor. Marc --

13          THE COURT: You got to get to a microphone. The  
14 audio won't pick you up otherwise.

15          MR. SWANSON: Good afternoon, your Honor. Marc  
16 Swanson on behalf of the City of Detroit.

17          MR. RAIMI: Charles Raimi, deputy corporation  
18 counsel, for the City of Detroit.

19          MS. PATEK: Good afternoon, your Honor. Barbara  
20 Patek on behalf of the Detroit Police Lieutenants and  
21 Sergeants Association.

22          MR. SUDNICK: Good afternoon, your Honor. Peter  
23 Sudnick, co-counsel for Lieutenants and Sergeants  
24 Association.

25          MR. WILLEMS: Good afternoon, your Honor. John

1 Willems on behalf of the City of Detroit.

2 MR. MACK: Good afternoon, Judge. Richard Mack with  
3 Michigan AFSCME Council 25 and the Coalition of Detroit  
4 Unions.

5 MS. GILBEAUX: Good afternoon, your Honor. I'm a  
6 claimant. My name is Debra Gilbeaux. I work with the City  
7 of Detroit Law Department.

8 THE COURT: Have all attorneys that were in the  
9 courtroom entered their appearance then? All right. And on  
10 the telephone, for the record, we'll have entries of  
11 appearance by -- we have at least one person who I'm told is  
12 participating rather than simply listening today, and anyone  
13 who is participating and on the phone I'd like to have you  
14 identify yourself and enter your appearance, please. Go  
15 ahead.

16 MR. TAUBITZ: Dennis Taubitz, a creditor.

17 MS. INDUSTRIUS: Irma Industrious, a creditor.

18 THE COURT: You're both breaking up very badly. You  
19 have to say it again, please.

20 MR. TAUBITZ: Dennis Taubitz, a creditor.

21 MS. INDUSTRIUS: And Irma Industrious, a creditor in  
22 the case.

23 THE COURT: All right. Are either of you on a cell  
24 phone?

25 MR. TAUBITZ: Yes.

1           THE COURT: That's not going to work well. Can you  
2 get to the land line?

3           MR. TAUBITZ: No. Unfortunately, we cannot.

4           THE COURT: Well, we have -- we may have some  
5 trouble with you hearing me or me hearing you. We'll do the  
6 best we can. For future reference, don't phone in on a cell  
7 phone. All right? Yes? Did you hear me?

8           MR. TAUBITZ: Yes. Thank you.

9           THE COURT: All right. Anyone else on the  
10 telephone? All right. Well, good afternoon to everyone. We  
11 have a number of matters scheduled for hearing today. Unless  
12 the city and the other parties have agreed on something  
13 different, we'll just go through them in the order they  
14 appear on the docket, so the first matter would be the city's  
15 fifteenth omnibus objection to claims. Ms. Imbrogno.

16           MR. IMBROGNO: Yes, your Honor. Again, Leah  
17 Imbrogno here from Foley & Lardner, counsel for City of  
18 Detroit, here with regard to the claims objections. We will  
19 begin with the fifteenth omnibus objection, which was as to  
20 certain no basis claims.

21           Now, the first response that we received that I  
22 would like to address was filed by a Ms. Constance Phillips.  
23 That is Docket Number 9860. And the reason why I'd like to  
24 address this first is because Ms. Phillips -- we believe Ms.  
25 Phillips is a pensioner with the city who filed Claim Number

1 3471. Claim Number 3471 is not on omnibus objection fifteen,  
2 nor is it on any of the omnibus objections, so that claim is  
3 not affected by the omnibus objection. As a result, the city  
4 has not filed a response -- or excuse me -- a reply to that  
5 response, and we believe that the granting of the omnibus  
6 objections will not affect Ms. Phillips' claim.

7 THE COURT: All right. Just for the record, is  
8 Constance Phillips present? I hear nothing. I did see that  
9 Ms. Phillips filed a response to each of the omnibus claim  
10 objections that are scheduled for hearing today, fifteen,  
11 sixteen, and seventeen, the gist of which was she said  
12 basically in case my claim is covered by this objection, this  
13 claim objection, you know, I reiterate my claim basically. I  
14 agree. From my review, I agree with you that none of  
15 these -- none of these omnibus objections to claim that are  
16 scheduled -- that are being heard today, fifteenth,  
17 sixteenth, or seventeenth, object to any claim of Constance  
18 Phillips, so her objection or response was unnecessary and is  
19 not responsive, and so we'll move on. Go on.

20 MR. IMBROGNO: The second response that we received  
21 was from Ms. Pamela Booker, and this was actually a response  
22 that was hand-delivered to our offices at Foley, and -- but  
23 we did notice it was never docketed with the Court, so we are  
24 unsure whether it was filed, but we decided to file a reply  
25 in further support of our objection in the abundance of

1 caution.

2 THE COURT: Well, after I read that in your  
3 response, your reply of May 21, I took a look, too, and I  
4 didn't find any --

5 MR. IMBROGNO: Okay.

6 THE COURT: -- the filing of any response by Pamela  
7 Booker to the city's fifteenth omnibus claim objection, so it  
8 was not filed.

9 MS. BOOKER: I have this, your Honor. I'm Pamela  
10 Booker.

11 THE COURT: Would you come to the microphone --

12 MS. BOOKER: Yes.

13 THE COURT: -- right there? You are who again?

14 MS. BOOKER: Pamela Booker.

15 THE COURT: Ms. Booker, why didn't you file anything  
16 with the Court?

17 MS. BOOKER: But I did, and I have it showing  
18 received.

19 THE COURT: Well, would you hand that up? Let me  
20 take a look.

21 MS. BOOKER: Okay.

22 THE COURT: Ms. Booker, I'm looking at what you've  
23 handed up. I'll say for the record it does appear to bear  
24 the file stamp of our clerk of court here in the Bankruptcy  
25 Court, and it shows a filing date of May 19, 2015, at 10:19

1 a.m. There's no trace or indication that this was put on the  
2 docket, as it should have been, so it appears you did file  
3 your response --

4 MS. BOOKER: Thank you.

5 THE COURT: -- and it doesn't appear on the docket  
6 for some reason. Now, hold on one second here. I'll take a  
7 quick look at your response since I haven't seen it yet.

8 MS. BOOKER: Okay. Thank you.

9 THE COURT: And, by the way, I'd like to have the  
10 ability to copy this so that we can get this scanned into our  
11 system and docketed as being filed on May 19. I do want this  
12 in the record since you did file it with the clerk.

13 MS. BOOKER: Thank you, your Honor.

14 THE COURT: Hold on. All right. Thank you. I've  
15 had a chance to review your response filed May 19. Do you  
16 need this back for the hearing?

17 MS. BOOKER: Yes, my copy, um-hmm.

18 THE COURT: Okay. Let me hand this back to you. Do  
19 you have an extra copy of this with you?

20 MS. BOOKER: No.

21 THE COURT: All right. Well --

22 MR. IMBROGNO: Your Honor, I have a copy of what we  
23 received during our hand-delivery, but --

24 THE COURT: See if it's the same as the original  
25 she's holding.



1 MR. IMBROGNO: -- it does not have the file stamp.

2 THE COURT: Do you have an extra you can give to Ms.  
3 Booker to review --

4 MR. IMBROGNO: Absolutely.

5 THE COURT: -- and reference during the hearing?

6 MR. IMBROGNO: May I approach?

7 THE COURT: With?

8 MR. IMBROGNO: It's a copy of Ms. Booker's response.

9 THE COURT: Yes. So is this an extra that we can  
10 use to --

11 MR. IMBROGNO: Yes.

12 THE COURT: -- file stamp and file?

13 MR. IMBROGNO: Yes, your Honor.

14 THE COURT: All right. Thank you. All right. Ms.  
15 Imbrogno, go ahead. What do you want to say about this?

16 MR. IMBROGNO: Ms. Booker filed Claim Number 2177 on  
17 February 20th of 2014. She alleged property damage from a  
18 fallen tree. Ms. Booker's claim was placed onto the  
19 fifteenth omnibus objection because the city did not see any  
20 basis for liability on the face of the claim. There were  
21 some tax and mortgage documents attached, and there was no  
22 explanation, and so the city thought that Ms. Booker was  
23 requesting payment for taxes or mortgage-related issues,  
24 which do not fall under the claims administration process.  
25 On May 19th Ms. Booker filed her response and provided some

1 additional information about her claim where she alleged that  
2 the city actually owns the property on which the tree that  
3 allegedly damaged her home was located. Even if Ms. Booker  
4 is correct that a tree from city-owned property damaged her  
5 own property, the city would be immune from liability on that  
6 basis. There's no exception to governmental immunity that  
7 applies to property damage for a fallen tree, and Ms. Booker  
8 has not claimed that any exception to governmental immunity  
9 would apply in this instance, and, as such, we believed that  
10 the fifteenth omnibus objection as to Ms. Booker's claim  
11 should be sustained.

12 THE COURT: So the authority that grants the  
13 immunity to begin with is what?

14 MR. IMBROGNO: MCL 691.1407.

15 THE COURT: Okay. So you said .1701 in your brief,  
16 but it's 1407.

17 MR. IMBROGNO: It is. My apologies, your Honor, for  
18 the typo.

19 THE COURT: Okay. Hold on a second. You're  
20 referring to 691.1407, sub 1, I guess; right?

21 MR. IMBROGNO: That's correct, government's immunity  
22 from tort liability.

23 THE COURT: Government's immunity from tort  
24 liability to governmental agencies engaged in the exercise of  
25 discharge of a governmental function. What does

1 "governmental function" mean in the context of this claim?

2 MR. IMBROGNO: I think in the context of this claim,  
3 it would actually be the alleged inaction in not removing the  
4 tree. Ms. Booker claims that the city was responsible for  
5 removing the tree, and it did not do so.

6 THE COURT: She says in her response filed May 19  
7 that the city is the owner of the property where this tree  
8 was located, I guess, next to hers.

9 MR. IMBROGNO: That's correct.

10 THE COURT: She says because it was forfeited to the  
11 city for delinquent taxes. Is all that correct?

12 MR. IMBROGNO: Your Honor, I think that when we  
13 filed our response, we thought that no matter what she had  
14 alleged the city would be governmentally immune, so we didn't  
15 actually research the substance of the claim, but we believe  
16 that either way, whether the city does own the tree or does  
17 not own the tree, it would not be liable to Ms. Booker for  
18 the alleged property damage.

19 THE COURT: Well, I did see -- I know you filed  
20 several responses last Thursday to various claims where you  
21 argue immunity. Do any of the cases -- or do any of the  
22 sections that you cited define what "governmental function"  
23 means?

24 MR. IMBROGNO: They do not, your Honor.

25 THE COURT: So is there a distinction under Michigan

1 law between governmental functions and proprietary functions  
2 exercised by a municipality?

3 MR. IMBROGNO: Your Honor, I am not sure, but I'm  
4 happy to brief that matter for you if that's something that  
5 you would be interested in reading.

6 THE COURT: Well, all right. Anything else you'd  
7 like to say then?

8 MR. IMBROGNO: No, your Honor.

9 THE COURT: Ms. Booker, what would you like to say  
10 about this?

11 MS. BOOKER: Just basically that I felt that the  
12 city should pay for the damages to my property. I don't know  
13 what else to say. I thought it was clear-cut that they owned  
14 the property and that they would take care of it.

15 THE COURT: What was the city doing with the  
16 property?

17 MS. BOOKER: It's just sitting there vacant and  
18 open.

19 THE COURT: Is this a residence, or what is this  
20 property?

21 MS. BOOKER: It's a residence.

22 THE COURT: So it's a --

23 MS. BOOKER: And they told me it was slated for  
24 development. That's all I know.

25 THE COURT: But it was a vacant house?

1 MS. BOOKER: Yes.

2 THE COURT: Single-family house?

3 MS. BOOKER: It's a vacant house.

4 THE COURT: Tree was on the property that's next to  
5 yours --

6 MS. BOOKER: Yes.

7 THE COURT: -- your property? Tree fell onto your  
8 property.

9 MS. BOOKER: Yes, sir.

10 THE COURT: Caused damage. That's your claim  
11 basically?

12 MS. BOOKER: Yes.

13 THE COURT: All right. Anything else you'd like to  
14 say, Ms. Booker?

15 MS. BOOKER: No, your Honor.

16 THE COURT: All right. Well, the city filed a reply  
17 in response to Ms. Booker's response to the claim objection  
18 on May 21, Thursday of last week, in which they argued that  
19 they have governmental immunity. The statutory citation, as  
20 provided in the hearing today, Michigan Compiled Laws,  
21 Section 691.1407, sub 1, provides as a general rule that "a  
22 governmental agency is immune from tort liability if the  
23 governmental agency is engaged in the exercise or discharge  
24 of a governmental function," unquote. As counsel for the  
25 city has acknowledged, however, none of the statutes, of

1 which there are several cited in the city's reply, nor the  
2 cases apparently discuss what governmental function means and  
3 how that phrase is -- applies or does not apply or may not  
4 apply or does apply in the context that we have here with Ms.  
5 Booker's claim. The city also says it has not researched the  
6 facts of the claim, but what we know is that the claim  
7 asserts that the city owned a vacant property, a residential  
8 property, and while the city owned that property, the --  
9 allegedly a tree on the property fell and caused damage to  
10 Ms. Booker's property. The city may well be immune in this  
11 instance, but I can't tell from the current record nor has  
12 the city demonstrated, in my view, yet, at least, that  
13 Section 694 -- 691.1407, sub 1, applies in this particular  
14 situation. I will give the city an opportunity to file a  
15 brief as to whether -- why the city contends specifically the  
16 governmental function concept of the immunity statute that  
17 the city has cited applies in this situation that we have  
18 with Ms. Booker's claim. Ms. Imbrogno, how much time do you  
19 want to file such a brief?

20 MR. IMBROGNO: Your Honor, I think a week would be  
21 sufficient.

22 THE COURT: One week, you say? All right. So  
23 that'll be June 3rd, 2015. Ms. Booker, you don't have an  
24 attorney representing you in this case, and that's fine.

25 MS. BOOKER: No.

1 THE COURT: You can represent yourself. You have  
2 every right to do that, but obviously as a pro se party, a  
3 person not represented by an attorney, you have the same  
4 rights and responsibilities as anyone who is represented by  
5 an attorney in the case --

6 MS. BOOKER: Um-hmm.

7 THE COURT: -- and you're subject to the same law  
8 and rules as everyone else. I'm going to consider the city's  
9 brief that they file but no later than June 3rd. I will give  
10 you a chance to file a written response to that brief if you  
11 want to. It's optional, but any response that you file will  
12 need to be filed no later than two weeks after the city's  
13 brief, so that's June 17.

14 MS. BOOKER: Okay.

15 THE COURT: You don't have to file a response, but  
16 if you're going to file a written response to the city's  
17 brief, you need to file it no later than June 17.

18 MS. BOOKER: Okay.

19 THE COURT: And we'll have a further hearing on this  
20 claim of the fifteenth omnibus objection to claim in our July  
21 objection to claim hearing date. That's July -- is it 22,  
22 Ms. Imbrogno?

23 MR. IMBROGNO: That's correct, your Honor.

24 THE COURT: Do you recall? Yeah. Hold on. All  
25 right. We'll make it the further hearing then July 22 at

1 1:30.

2 MS. BOOKER: Thank you, your Honor.

3 THE COURT: So, Ms. Imbrogno, I forget. Did you say  
4 this is a copy we can use for filing purposes?

5 MR. IMBROGNO: That's correct, your Honor.

6 THE COURT: All right. So, Ms. Booker, we'll take  
7 the copy here of your response filed May 19. We'll file it  
8 in the case so it'll be in the record, and it'll have a file  
9 date of May 19 on our Court's docket.

10 MS. BOOKER: Okay. So will I receive a copy of the  
11 brief?

12 THE COURT: Yes. The City will --

13 MR. IMBROGNO: Yes.

14 THE COURT: -- mail you a copy of the brief --

15 MS. BOOKER: Okay.

16 THE COURT: -- that they file, so then you'll have  
17 an opportunity to respond to it.

18 MS. BOOKER: Um-hmm.

19 THE COURT: All right. Thank you --

20 MS. BOOKER: Thank you.

21 THE COURT: -- Ms. Booker. So what else about the  
22 fifteenth omnibus objection then, Ms. Imbrogno?

23 MR. IMBROGNO: The next response that was filed was  
24 by a Mr. Mario Ross, and that was with regard to Claim Number  
25 3087 in the amount of \$8,500 alleging a basis of sewerage



1 services performed. Mr. Ross did not attach any supporting  
2 documentation or any -- or nor did he state any basis on  
3 which the city was liable. Mr. Ross was added to the  
4 fifteenth omnibus objection because he did not provide any  
5 such basis for the city's liability.

6           On May 20th Mr. Ross filed a response where he  
7 provided further information about his claim. Specifically,  
8 he claims that his property was damaged by the Detroit Water  
9 and Sewer Department. Mr. Ross did not provide any  
10 supporting documentation with his response either, so, as a  
11 result, we believe that Mr. Ross' claim should be disallowed  
12 and expunged on two grounds. First, Mr. Ross did not provide  
13 any supporting documentation, as is required by Rule 3001,  
14 and, second, again, we believe the city is immune from  
15 liability for any sewerage overflow or backup of a sewer  
16 system unless it amounts to a sewer disposal system event.  
17 This is basically where there's a known defect in the sewer  
18 system. The city -- Mr. Ross has not provided the city with  
19 any supporting documentation arguing that it is a sewer  
20 disposal system event nor does he say there was any default  
21 or defect in the sewer system. Further, Mr. Ross has not  
22 complied with the notice requirements that are set forth in  
23 MCL 691.1419. This requires the claimant to provide notice  
24 to the city of any sewer damages within 45 days of those  
25 damages, so for all of these reasons, we believe that Mr.

1 Ross' claim should be disallowed and expunged and that the  
2 fifteenth omnibus as to his claim should be sustained.

3 THE COURT: Mr. Ross -- for the record, is Mario  
4 Ross present or is there anyone here on behalf of Mario Ross?  
5 Mr. Ross, come forward, please, if you want to be heard.  
6 While he's coming forward, Ms. Imbrogno, the immunity statute  
7 you're citing here is a little different than for the last  
8 claim. It's Michigan Compiled Laws, Section 691.1417, sub 2,  
9 I believe; right?

10 MR. IMBROGNO: That's correct, your Honor. It is a  
11 different basis.

12 THE COURT: Which deals specifically with  
13 governmental immunity for tort liability for the overflow or  
14 backup of a sewage disposal system with a specific exception  
15 described in the statute that you've been discussing; right?

16 MR. IMBROGNO: That's correct.

17 THE COURT: All right. So, Mr. Ross, what would you  
18 like to say about your claim and the city's objection to your  
19 claim and the city's arguments here?

20 MR. ROSS: I believe I had documented it because I  
21 had Roto-Rooter come out, you know, inspect my sewer system  
22 and they told me, you know, that they can't do anything with  
23 it, that it's the city's problem in some drain they have out  
24 there. I thought I had posted that report, but I don't know  
25 what happened to it. I don't have any --

1 THE COURT: You got to speak up. I can't hear you  
2 very well.

3 MR. ROSS: Well, I don't have documents with me, but  
4 I thought I had posted their inspection with my claim, so --

5 THE COURT: Well, you have not filed any  
6 documentation supporting your claim --

7 MR. ROSS: Okay.

8 THE COURT: -- either with your proof of claim or  
9 with your May 20th response to the city's objection. What  
10 else do you want to say about this claim?

11 MR. ROSS: I'm just -- because I had got a lot of  
12 property damage, I was just trying to get it repaired and  
13 everything because their sewer even backs up all my  
14 neighbor's stuff, and they're having complaints.

15 THE COURT: You heard -- I hope you heard when you  
16 were sitting in the back of the courtroom Ms. Imbrogno's  
17 arguments here on behalf of the city today regarding  
18 immunity. Did you receive a copy of the city's reply to your  
19 response that the city filed on May 21?

20 MR. ROSS: Yes.

21 THE COURT: So you read what that said about  
22 immunity; right?

23 MR. ROSS: About immunity?

24 THE COURT: About the governmental immunity argument  
25 the city is making. You read what that said about that?

1 MR. ROSS: Yes, I read.

2 THE COURT: Do you want to respond any further to  
3 that argument?

4 MR. ROSS: Not really. Not really, no, no.

5 THE COURT: All right. Anything else about your  
6 claim you want to say, Mr. Ross?

7 MR. ROSS: I don't have anything else to say.

8 THE COURT: All right. Well, thank you. The city's  
9 objection to the claim of Mr. Ross, which is part of the  
10 fifteenth omnibus objection, must be sustained. First, Mr.  
11 Ross has not provided documentation in support of his claim  
12 which is sufficient to establish that the -- or avoid the  
13 immunity defense argued by the city under Michigan Compiled  
14 Laws, Section 691.1417, and, therefore, has not properly  
15 supported his claim either in the original proof of claim  
16 that he filed in this case or in the response that he filed  
17 on May 20, 2015, at Docket 9850 to the city's objection to  
18 the claim. The city has demonstrated that it has immunity  
19 from liability for the claim asserted by Mr. Ross, which is  
20 property damage caused by the City of Detroit sewerage  
21 company, as he puts it, in his May 20th response. Under  
22 Michigan Compiled Laws, Section 691.1417, sub 2, the city  
23 is -- as a governmental agency, is immune from liability --  
24 tort liability, which is what we're talking about in this  
25 claim, for the overflow or backup of a sewage disposal system

1 unless certain specified requirements -- numerous  
2 requirements are met that are set forth in the later  
3 subsections of that statute. Those requirements are not met  
4 nor does the proof of claim or other document filed by Mr.  
5 Ross allege that any of those requirements are met, including  
6 the notice requirement of Section 691.1417, subparts 3 and 4,  
7 and so the -- based on immunity under the statute, the claim  
8 must be disallowed, and the city's objection to the claim is  
9 sustained.

10 MR. ROSS: Okay.

11 THE COURT: All right. So, Ms. Imbrogno, that's the  
12 fifteenth omnibus?

13 MR. IMBROGNO: That's correct, your Honor.

14 THE COURT: I did see there was a certificate of no  
15 response filed this morning --

16 MR. IMBROGNO: Yes, your Honor.

17 THE COURT: -- regarding this objection to claim. I  
18 think there was one filed regarding the fifteenth, sixteenth,  
19 and seventeen. They were all filed this morning. I haven't  
20 had a chance to look at those or look at the proposed orders  
21 that you submitted this morning. I was on the bench all  
22 morning -- or most of the morning, so, you know, when you  
23 wait until the morning of Wednesday, I'm usually on the  
24 bench, and I don't have time to -- I don't have the ability  
25 to look at anything that you submit that day, so I will

1 certainly be happy to look at the -- review the certificate  
2 of no response and the proposed order. The proposed order,  
3 however, now needs to include disallowance of Mr. Ross'  
4 claim, and I assume the order you submitted didn't do that.

5 MR. IMBROGNO: That's correct. We had it carved  
6 out.

7 THE COURT: All right. Well, let's do this just for  
8 simplicity. I will take the order you submitted this  
9 morning, and I will use that to -- for purposes of ruling on  
10 the claims for which the no response was filed by the  
11 creditors to the fifteenth objection. I'll prepare and enter  
12 an order in addition to that that disallows Mr. Ross' claim  
13 and which sets out the further proceedings that we're going  
14 to have on the claim of Pamela Booker as we discussed  
15 earlier, so I'll prepare and enter that order.

16 MR. IMBROGNO: Okay.

17 THE COURT: All right. That's the fifteenth omnibus  
18 objection. We're going to the sixteenth now?

19 MR. IMBROGNO: Yes, your Honor. The sixteenth  
20 omnibus objection actually only has the one response filed,  
21 and that was the Constance Phillips response that we  
22 discussed earlier, so not only was that late filed but also  
23 Ms. Phillips' claim is not affected by the sixteenth omnibus  
24 objection, so, therefore, we believe that this claim -- or  
25 I'm sorry -- the sixteenth omnibus objection should be

1 otherwise sustained.

2 THE COURT: All right. As I said earlier, I agree  
3 that the sixteenth objection does not object to any claim  
4 filed by Constance Phillips, so there has been no timely  
5 response by anyone to that sixteenth omnibus objection. I'll  
6 review the certificate of no response you filed this morning  
7 and the order and presumably will get that entered or perhaps  
8 with revisions, nonsubstantive revisions. All right. Thank  
9 you.

10 MR. IMBROGNO: All right. Your Honor, if it's okay  
11 with you, I'm hoping that we can actually go to the  
12 thirteenth omnibus objection at this time, and then I will  
13 turn it over to Ms. Dolcourt on the seventeenth omnibus  
14 objection. It'll limit some shuffling.

15 THE COURT: That's fine.

16 MR. IMBROGNO: Okay.

17 THE COURT: All right. Now, there we're talking  
18 about the only claim left, which is claims of Richard Hall;  
19 right?

20 MR. IMBROGNO: That's correct, your Honor.

21 THE COURT: Two claims. Two claims filed by Richard  
22 Hall.

23 MR. IMBROGNO: Yes. And I believe Mr. Hall is here  
24 today.

25 THE COURT: Is Richard Hall present? Mr. Hall, come

1 on up. All right. Just for the record, you are?

2 MR. HALL: Richard Hall.

3 THE COURT: All right. Mr. Hall, you're the  
4 creditor with respect to these claims, and we'll hear the  
5 city's objections to your two claims now. I did review the  
6 debtor's reply. They filed -- the city filed -- I'm sorry.  
7 The city filed one reply with respect to each claim, so two  
8 replies. They were filed May 21. I assume you got those in  
9 the mail?

10 MR. HALL: I didn't get them in the mail yet.

11 THE COURT: You did not?

12 MR. IMBROGNO: Your Honor, if I may, I actually  
13 spoke to Mr. Hall yesterday morning on the telephone. He  
14 told me that he did not receive them in the mail, though they  
15 were sent by FedEx, and I actually e-mailed them to him as  
16 well tomorrow, and we agreed that that would be okay as well,  
17 so --

18 THE COURT: You e-mailed them what? Yesterday?

19 MR. IMBROGNO: Yesterday morning to him.

20 THE COURT: Did you receive those by e-mail then?

21 Sorry.

22 MR. HALL: Yes, I did.

23 THE COURT: Oh, all right. So you've had a chance  
24 to review the city's response regarding your --

25 MR. HALL: Yes.



1 THE COURT: -- reply regarding your two claims;  
2 right?

3 MR. HALL: Yes; correct.

4 THE COURT: Okay. Ms. Imbrogno, I'll hear from you  
5 first, and then we'll hear from Mr. Hall.

6 MR. IMBROGNO: Thank you, your Honor. With regard  
7 to Mr. Hall's responses, they regard two different claims,  
8 one Claim Number 474 and another Claim Number 1097. They are  
9 very similar arguments in that we believe that both are  
10 barred by the statute of limitations, but I will take each in  
11 turn. Mr. Hall's Claim Number 474 was filed on January 3rd,  
12 2014, in the amount of \$100,000. The stated basis for the  
13 claim was "injured." Mr. Hall attached documents to his  
14 claim regarding an alleged highway defect. Allegedly he was  
15 burned on the leg by a steam grate, and this incident  
16 occurred on June 28th, 2012. Mr. Hall attached a notice of  
17 intention to file suit. That was actually filed with the  
18 State of Michigan, Department of Transportation. According  
19 to the city's records, no notice of intention to file suit  
20 was filed with the city, so the city filed its objection to  
21 Mr. Hall's Claim 474 because to the extent that Mr. Hall had  
22 a claim against the city, which we -- you know, for purposes  
23 of this, we will argue that he may have, the statute of  
24 limitations actually expired on that claim as of June 28th,  
25 2014.

1 Further, Mr. Hall did not provide the necessary  
2 statutory notice under MCL 691.1404 where any notice to the  
3 city regarding a highway defect is required to be sent by  
4 certified mail within 120 days of the alleged injury.

5 In addition, again, the statute of limitations  
6 expired on June 28, 2014. There's a two-year statute of  
7 limitations regarding highway defect claims. That's MCL  
8 691.1411. Mr. Hall has argued that the filing of his proof  
9 of claim actually acted to toll his statute of limitations,  
10 and the case law we believe is clear that the filing of a  
11 proof of claim does not constitute commencement of an action  
12 which is necessary to toll a statute.

13 Mr. Hall had two options. He could have either  
14 filed a motion to lift the automatic stay and then filed suit  
15 against the city on his claim or, alternatively, he could  
16 have utilized the 30-day grace period provided for in Section  
17 108(c)(2) of the Bankruptcy Code whereby he could have filed  
18 suit within 30 days after expiration of the bankruptcy stay.  
19 Mr. Hall did not do either of those things, so given that  
20 there is no possible liability on the underlying claim, we  
21 believe that Mr. Hall's Claim Number 474 should be expunged  
22 and that the thirteenth omnibus should be sustained as to  
23 that claim.

24 THE COURT: All right. One second. I want to -- I  
25 want to come back to the two-year statute of limitations

1 perhaps in a minute. I want to talk first further and have  
2 Mr. -- give Mr. Hall a chance to respond regarding the  
3 requirement in Michigan Compiled Laws, Section 691.1404, sub  
4 1, that the city is relying on here that required Mr. Hall,  
5 as the injured person, within 120 days from the time of  
6 the -- when the injury occurred to serve a notice on the City  
7 of Detroit of the occurrence of the injury and the defect to  
8 contain certain specified information, as required by the  
9 statute. Mr. Hall, there's no documentation in the record,  
10 at least at present that I can tell, that you served any  
11 notice -- such notice on the City of Detroit. Did you?

12 MR. HALL: I did an intention to file the --  
13 intention to file the suit because I was trying to see who  
14 was liable. Was it going to be the city or would it be  
15 handled by the state? And the city did respond to that  
16 intention to file the claim right before the bankruptcy, so  
17 part of that was maybe my intent was to maybe settle up  
18 without going any further and also the tolling because of the  
19 bankruptcy put the case in standstill, so I added up my days  
20 from when the city went to bankrupt. And what was that?  
21 December or something like that? So actually I'm thinking  
22 the day that they added the days up from the day --

23 THE COURT: Well, let's go back. Let me go back to  
24 the question --

25 MR. HALL: -- filing the bankruptcy.

1           THE COURT: -- excuse me -- the question that I  
2 asked here. I'm not focusing on the two-year statute of  
3 limitations for filing a claim, filing a lawsuit at the  
4 moment. I'm talking only about the 120-day notice  
5 requirement. You seem to be saying --

6           MR. HALL: Well, I thought --

7           THE COURT: -- or implying that you served on the  
8 City of Detroit a notice of this claim.

9           MR. HALL: No. I filed in the State of Michigan  
10 Court of Claims, but the city responded to that intent to  
11 file a lawsuit asking me -- they needed further information  
12 to process my -- they was handling my case, and they were  
13 processing -- I didn't send it to the city. It was sent in  
14 the Michigan state courts, and they responded. The city  
15 responded to that claim or whatever that lawsuit -- so,  
16 therefore, I was dealing with the city at that time because  
17 when I filed, I filed it in the State of Michigan Court of  
18 Claims, but the City of Detroit responded to that before the  
19 bankruptcy and all that stuff. They responded. I didn't  
20 send anything to the city. I guess I don't know how they got  
21 ahold of the case anyway. I don't know what happened, so I  
22 was kind of confused.

23           THE COURT: Well, the only thing I saw -- and, you  
24 know, this -- you filed a lot of papers --

25           MR. HALL: They got --

1 THE COURT: -- a lot of paper in connection with  
2 your claim and your response, but what I saw was in --

3 MR. HALL: Why did they respond to it?

4 THE COURT: Excuse me. Don't interrupt me.

5 MR. HALL: I'm sorry.

6 THE COURT: Just a minute. I'm talking now. One  
7 second. Hold on. Attached to your proof of claim is a  
8 verified notice of intention to file claim that apparently  
9 was filed in the Michigan Court of Claims --

10 MR. HALL: Correct.

11 THE COURT: -- by an attorney representing you --

12 MR. HALL: Um-hmm.

13 THE COURT: -- Ronald Weiner.

14 MR. HALL: Correct.

15 THE COURT: And his signature is dated September 28,  
16 2012. This was attached to your proof of claim, this  
17 document, and that's a two-page document. It's titled  
18 "Verified Notice of Intention to File Claim," and it says the  
19 claimant -- starts out saying, "Claimant, Richard Hall, by  
20 his attorneys," et cetera. Then it says, "hereby submits his  
21 notice of intention to file claim against the State of  
22 Michigan, Department of Transportation, and states the  
23 following," and it doesn't say anything about an intention to  
24 file claim against the City of Detroit. And it is under a  
25 case caption that says Richard Hall versus Michigan

1 Department of Transportation, nothing about the City of  
2 Detroit. I think the city's argument is that only shows that  
3 you, at most, served a notice of intention to bring the claim  
4 on the State of Michigan, Department of Transportation, and  
5 doesn't show that you served such a notice on the City of  
6 Detroit. Is there any other particular document that you  
7 have filed or that you can produce that is a copy of a notice  
8 of intention to file claim against the City of Detroit?

9 MR. HALL: No, sir. My understanding is would the  
10 city be liable? Would you all be immune from that also?  
11 Would it be toward the state because I got paperwork saying  
12 that the city responded to that. How would you all respond  
13 to that? I got papers saying you all responded, and you all  
14 wanted to process the claim or whatever when I filed it, but  
15 how did you all get ahold of that anyways when I sent it to  
16 the Michigan -- the Court of Claims? How did you all respond  
17 to it? That was the whole purpose of who was being liable,  
18 and you all responded. I didn't even send anything to the  
19 city. There's paperwork in my objection where you all  
20 responded to that saying that you all needed further  
21 information to process my claim. I didn't ever send anything  
22 to the city, so, therefore, I was confused over who was  
23 liable for that. Then the bankruptcy stuff popped up. I  
24 couldn't get any information, so I put in my claim. And  
25 because of your all bankruptcy, it's a standstill, so I still

1 have time to put my claim in. The 120 days, the 30 days  
2 modification, at first it was a stay modification. You all  
3 did not -- you all was not objecting to anything, anything  
4 until now, so it wasn't up to me to file a lawsuit where it  
5 could have been a settlement. I didn't have to file a  
6 lawsuit if you want to settle it. That's what the intention  
7 was if you wanted to settle it. I didn't know anything about  
8 the city or whatever, what they was going to do, so --

9 THE COURT: Mr. Hall, is it correct that this injury  
10 you suffered that we're talking about now, which is a subject  
11 of this claim -- it's not the Section 1983 claim against the  
12 city regarding actions of the police. This is the other  
13 claim.

14 MR. HALL: Correct.

15 THE COURT: The notice of intention to file a claim  
16 that I just referred to says the claim arose on June 28,  
17 2012.

18 MR. HALL: Um-hmm.

19 THE COURT: It gives a time and location. It says  
20 claimant walked over a steam grate and hot steam burned his  
21 leg and goes on from there. It's that injury we're talking  
22 about. Now, is that the correct date of the injury, June 28,  
23 2012?

24 MR. HALL: Correct.

25 THE COURT: It is. All right. So all right.

1 Anything else you'd like to say about this 120-day notice  
2 issue?

3 MR. HALL: I don't know. You all -- the city  
4 responded January 2013, '14, something like that. I don't  
5 know. You all responded in 2014 saying you all wanted to  
6 process the -- you all was handling my case, whatever that  
7 was, so what was I supposed to do? Still go to the state and  
8 you all would have sent me back -- it would have been the  
9 city? I could have claimed it or filed suit in the city? I  
10 didn't know. That's why the intent was sent out in the state  
11 just like you saying about the sewer. The city, they're your  
12 all governmental agency or whatever, so it was sent to the  
13 state, so I was trying to find out who was liable, I guess.

14 THE COURT: All right. Ms. Imbrogno, did you want  
15 to reply regarding this 120-day notice issue?

16 MR. IMBROGNO: Your Honor, I can tell you that we  
17 did look in the city's records to see if there was anything  
18 with -- that would have been a notice of intent to file claim  
19 on Mr. Hall's claim, and the only thing that the city had  
20 regarding Mr. Hall was a FOIA request that we believe is  
21 actually related to Claim Number 1097 and not this claim.

22 MR. HALL: Well, I have paperwork saying you all --  
23 you all responded to it. You all responded with -- you all  
24 received a notice of intent to file a claim.

25 THE COURT: Excuse me, Mr. Hall.



1 MR. HALL: How did it go to your --

2 THE COURT: Is the papers -- are papers attached to  
3 your proof of claim any -- in the 90 pages or so you attached  
4 to your claim that is the city's response that you keep  
5 referring to?

6 MR. HALL: Yes, it is. I have a copy of it. I  
7 should have a copy.

8 THE COURT: Where is it? You got 90 pages here. I  
9 don't see it. Can you tell me about --

10 MR. HALL: I have it in my --

11 THE COURT: -- where it is in this?

12 MR. HALL: I have it in my folder, a copy of it  
13 where they responded to it and stuff like that saying we need  
14 to file -- we are tolling this case, and we're going to  
15 process your case.

16 THE COURT: Is this attached to one of the documents  
17 attached to your proof of claim?

18 MR. HALL: Yes, it was. Yes, it was.

19 THE COURT: I don't see it, so you better go get it  
20 if you have a copy there. While he's looking for that, Ms.  
21 Imbrogno, is there any such document, as far as you know,  
22 attached to the proof of claim?

23 MR. HALL: I'm looking, your Honor, and I believe  
24 there is a document that's titled "Medicare Reporting  
25 Affidavit and Indemnification of the City of Detroit by

1 Claimant Plaintiff." I do not know the source of this  
2 document, and the city did not have this document in its  
3 records. This also, you know, does not amount to a notice of  
4 intention to file suit, as required to be filed under  
5 691.1404. That's on page 13 of 90 on Docket 9873-1.

6 THE COURT: Mr. Hall --

7 MR. HALL: Yes, sir.

8 THE COURT: -- come on back, would you? I think I  
9 may have found this. I'll ask you if this is the document.

10 MR. HALL: So you found it?

11 THE COURT: Attached to your proof of claim is a  
12 one-page letter dated November 25, 2013, on what appears to  
13 be City of Detroit letterhead addressed to Ronald Weiner,  
14 your attorney, and it is signed by Monique Tyler, legal  
15 investigator. It says, "Dear Mr. Weiner: Upon review of  
16 your client's file, it was found that the City of Detroit has  
17 attempted to process your claim, but due to lack of  
18 sufficient documents -- information, we are unable to  
19 proceed. The City of Detroit Law Department Claims Division  
20 requires that all claims contain specific information for  
21 adequate processing," and then it goes on to request a  
22 Medicare affidavit and health authorization. That's the gist  
23 of it. Is that the letter you were referring to earlier?

24 MR. HALL: Yes.

25 THE COURT: Yes? That letter, as I said, is dated

1 November 25, 2013. It refers to you as the claimant, and it  
2 says DOI -- I assume that means date of injury -- 6-28-12.

3 MR. IMBROGNO: Your Honor, I can tell you that this  
4 was not in the file that the city had, and I do not know what  
5 the source of this claim is.

6 THE COURT: Hold on. Well, so, Ms. Imbrogno, you  
7 don't know how the city may have gotten involved in dealing  
8 with this claim.

9 MR. IMBROGNO: I do not, unfortunately, and this  
10 has, you know, come to my attention, but I think that  
11 despite -- well, even if the city had been part of a notice  
12 of intention to file claim, arguably, the two-year statute of  
13 limitations would still prevent Mr. Hall's claim.

14 THE COURT: Well, we're going to get to that if we  
15 need to because that's a little more complex than I think the  
16 city's argument makes it out to be. At least I have some  
17 questions about it. All right. Let's get to that then. Ms.  
18 Imbrogno, I read the arguments you made in your reply on  
19 this, and you made a similar statute of limitations argument  
20 about the 1983 claim of Mr. Hall, the other claim that we'll  
21 talk about. As I understand your argument, it is here that  
22 there's a two-year statute of limitations for this injury  
23 claim in Claim 474, so the two-year statute would have  
24 expired June 28, 2014, under state law. By that time, of  
25 course, the city had filed several months earlier a Chapter 9

1 bankruptcy case, and the automatic stay took effect, and so  
2 the automatic stay was in effect during the Chapter 9 case,  
3 and Mr. Hall had the benefit of Section 108(c). And you  
4 referred to the Section 108(c)(2) 30-day window, which gives  
5 a claimant whose -- as I understand it, the city agrees that  
6 if a claimant has a claim against the city, the city files  
7 bankruptcy before the statute of limitations expires, which  
8 is true in this case with respect to the two-year statute,  
9 108(c)(2) means that -- in effect, that the statute will not  
10 be deemed to have expired on the claim until 30 days after  
11 notice of the termination or expiration of the stay under  
12 Section 362 -- one second -- or 922, so we've got an  
13 automatic stay under both Section 362 and 922 that arose when  
14 the city filed their Chapter 9 petition. Under Section  
15 108(c)(2) you're saying that the statute -- or the automatic  
16 stay terminated. At some point, debtor -- Mr. Hall got  
17 notice of it, and 30 days passed, and he didn't file any  
18 claim.

19 MR. IMBROGNO: That's correct, your Honor.

20 THE COURT: That's why this -- that's why his claim  
21 is time-barred under the statute of limitations.

22 MR. IMBROGNO: That's correct.

23 THE COURT: Okay. So walk me through the argument  
24 in a bit more detail under Section 108(c)(2). When and how  
25 did the automatic stay terminate or expire? You seem to be

1     implying in your argument that that happened on the effective  
2     date of the confirmed Chapter 9 plan. And when did Mr. --  
3     and how did Mr. Hall get notice of the termination or  
4     expiration of the stay so as to start the running of that 30-  
5     day period? Those are two questions. And the third question  
6     is how could Mr. Hall have filed a claim -- a lawsuit against  
7     the city on this claim, this pre-petition claim, after the  
8     effective date of the confirmed plan without violating a  
9     discharge injunction under Section 524 and also the  
10    injunction provisions in the confirmed plan?

11           MR. IMBROGNO: Right.

12           THE COURT: Wasn't this a discharged claim?

13           MR. IMBROGNO: I think that those are definitely  
14    considerations that the city should not take into account and  
15    that we could, you know, also offer some supplemental  
16    briefing on that as well.

17           THE COURT: Well, these are questions that popped  
18    into my head after I read your --

19           MR. IMBROGNO: Um-hmm.

20           THE COURT: -- argument because you didn't address  
21    those, and, you know, it strikes me as a difficult  
22    proposition to say that Mr. Hall would be barred from having  
23    an allowed claim on a timely proof of claim that he filed in  
24    the case because he didn't violate the discharge injunction  
25    by filing a lawsuit. You see the problem I'm having?

1           MR. IMBROGNO: I do, and I still think it was a  
2 possibility that Mr. Hall could, you know, file a motion to  
3 lift the stay as to his claim and filed it within the statute  
4 of limitations.

5           THE COURT: Well, he could have -- he could have  
6 filed a motion for relief from stay. There's nothing in  
7 Section 108(c) that would -- could be read as requiring him  
8 to have done so, is there?

9           MR. IMBROGNO: No, I do not believe that there is.

10          THE COURT: He didn't have to do that. There's  
11 nothing -- no provision of the Bankruptcy Code required him  
12 to do that; right?

13          MR. IMBROGNO: Um-hmm.

14          THE COURT: Did it?

15          MR. IMBROGNO: No, it did not.

16          THE COURT: Okay. So these are questions I have  
17 about your Section 108(c)(2) argument, and the same questions  
18 I think -- same questions are going to apply with respect to  
19 Mr. Hall's Section 1983 claim --

20          MR. IMBROGNO: I agree.

21          THE COURT: -- because that, too, is a discharge  
22 claim under the plan, isn't it?

23          MR. IMBROGNO: I would have to look into it before I  
24 answer, yes.

25          THE COURT: I think it is, so -- but there's really

1 three questions there.

2 MR. IMBROGNO: Um-hmm.

3 THE COURT: One, exactly how and when did the  
4 automatic stay terminate or expire; number two, how and when  
5 did Mr. Hall get notice of the termination or expiration of  
6 the stay because it's 30 days from notice under 108(c)(2)  
7 that is the deadline; and, three, how could Mr. Hall have  
8 filed a lawsuit on a discharge claim after the effective date  
9 of the claim without violating the discharge injunction under  
10 Section 524, which applies in Chapter 9 cases under Section  
11 901, and violating the injunctive provisions of the confirmed  
12 plan? And if he could not have, then what do we do with  
13 that? So, you know, I think the city might be right on the  
14 first two questions that I've raised; that is, in implying  
15 without really explaining or supporting it in your reply that  
16 the automatic stay expired on the effective date of the plan.  
17 You might be right about that, but as to the third question,  
18 I've got a problem there.

19 MR. IMBROGNO: Understood.

20 THE COURT: First two questions, you know, I need --  
21 just I need an explanation in more detail, more of a chapter  
22 and verse-type thing, because this is -- it's not really such  
23 a simple matter. Now, the issue -- the first issue about --  
24 Claim 474 here about Mr. Hall not having served a notice on  
25 the City of Detroit as opposed to the State of Michigan

1 within 120 days of the injury in question is a little  
2 different issue. Now, as to that issue, Mr. Hall has said in  
3 today's hearing that he didn't serve any notice directed to  
4 specifically the City of Detroit. We have the one that's  
5 attached to his proof of claim only, which is directed only  
6 to the State of Michigan, yet we have this November 25, 2013,  
7 letter apparently, at least, from somebody at the City of  
8 Detroit Law Department seemingly responding to this claim,  
9 so, now, you did say you've already checked, and the city has  
10 already checked, and they don't have it in their files or  
11 records anywhere, any sort of notice of injury regarding this  
12 June 28, 2012, injury; right?

13 MR. IMBROGNO: That's correct, your Honor, and  
14 that's -- once again, because it's not in the files doesn't  
15 mean it wasn't once there, but we have checked, and there is  
16 no notice in the city's files regarding Mr. Hall's personal  
17 injury claim.

18 THE COURT: You've looked at this November 25, 2013,  
19 letter?

20 MR. IMBROGNO: I saw it, but I did not make the  
21 correlation that it was at all related to the notice of  
22 intention to file a claim that was filed regarding the state.

23 THE COURT: Well, on the current record, I'm really  
24 not yet in a position to make a ruling as to whether or not  
25 the city was not timely -- the City of Detroit was not timely



1 provided with a notice of injury required under Michigan  
2 Compiled Laws, Section 691.1404, sub 1. That's the 120-day  
3 notice of the injury.

4 MR. IMBROGNO: Um-hmm.

5 THE COURT: Under the circumstances, the record is  
6 not sufficiently clear and developed to enable the Court to  
7 make a ruling on that. That might be an independent basis  
8 for disallowing Claim 474. It wouldn't apply to Mr. Hall's  
9 Section 1983 claim, which is the other claim we'll talk about  
10 in a minute, but the current record doesn't permit me to  
11 sustain the city's objection or overrule it, for that matter,  
12 based on this 120-day notice requirement.

13 With respect to the two-year statute of limitations  
14 and the Section 108(c)(2) argument, if the city wants to  
15 pursue that argument and further brief it, I'll certainly  
16 allow that. Do you want to?

17 MR. IMBROGNO: Yes, your Honor. The city also  
18 just -- we will make clear that we do preserve our rights to  
19 object on substantive grounds to this claim to the extent  
20 that the statute of limitations argument is not sustained.

21 THE COURT: Right, yeah. And you said that in your  
22 papers. I saw that. All right. You want the same sort of  
23 schedule that we have with Ms. Booker's claim on the 15th  
24 omnibus --

25 MR. IMBROGNO: Your Honor, could we get --

1 THE COURT: -- brief within a week, or do you want  
2 longer?

3 MR. IMBROGNO: Could we get two weeks on this one,  
4 please?

5 THE COURT: Yes. So that'll be June 10th, 2015.  
6 Mr. Hall, as I mentioned earlier with Ms. Booker on her  
7 matter, the city is going to file a brief on these legal  
8 issues that I've raised regarding Section 108(c)(2) and the  
9 statute of limitations, and they're going to be -- they'll  
10 send you a copy of that. I'll give you an opportunity to  
11 file a written response to that if you want to. How much  
12 time do you want after that? Is two weeks plenty?

13 MR. HALL: Plenty.

14 THE COURT: Pardon me?

15 MR. HALL: Yes.

16 THE COURT: All right.

17 MR. HALL: I have a question.

18 THE COURT: Yes.

19 MR. HALL: The bankruptcy -- the cure -- what is  
20 the -- Michigan tolling on that is standstill. The stay  
21 modification was -- it was sustained. I didn't get the -- I  
22 got the letter. What was it? This year it said they were  
23 going to stay, and then it came -- then it came with the  
24 objections, so the stay modification was still there. It  
25 wasn't the 120-day. It just came up maybe some months ago,

1 and our objection came, so what is the --

2 THE COURT: I don't understand what you're saying or  
3 asking, but this isn't the time for you to ask questions of  
4 me on something in the case.

5 MR. HALL: Well, can you add up the bankruptcy  
6 tolling, the standstill? How long is that where I can still  
7 file?

8 THE COURT: I don't understand what you're saying.

9 MR. HALL: I'm just asking. The bankruptcy  
10 standstill, the tolling -- Michigan tolling, what is the  
11 numbers on that?

12 THE COURT: Nobody has said that there's any  
13 Michigan tolling going on, Mr. Hall, so I'm not sure what  
14 you're saying, but I'm not here to answer your questions.

15 MR. HALL: Okay.

16 THE COURT: I'm here to deal with these arguments  
17 that you and the city are making on this claim objection,  
18 and --

19 MR. HALL: Okay. I agree.

20 THE COURT: -- that's what I'm in the process of  
21 doing.

22 MR. HALL: Okay.

23 THE COURT: The city will file their brief on the  
24 statute of limitations issues no later than June 10, 2015.  
25 Mr. Hall, you may file a written response to that brief no

1 later than June 24, 2015, and we'll have a further hearing  
2 with respect to Claim 474 on July 22 at 1:30 p.m.

3 Now, with respect to Mr. Hall's Section 1983 claim,  
4 which is Claim Number 1097, which was also adjourned for  
5 further hearing -- for hearing today, Ms. Imbrogno, you've  
6 raised there the same type of statute of limitations  
7 argument. In this case, your argument is a three-year  
8 statute of limitations for the 1983 claim, and then you're  
9 arguing Section 108(c)(2); right?

10 MR. IMBROGNO: That's correct, your Honor. I think  
11 it'll be the same three issues that we have previously  
12 discussed. If we can also be permitted to file a  
13 supplemental brief as --

14 THE COURT: Yes.

15 MR. IMBROGNO: -- to those issues, the same two  
16 weeks would be fine.

17 THE COURT: Same schedule, same everything then,  
18 what I just said about the other claims, so the city brief  
19 June 10. Mr. Hall, you may respond with a written response  
20 by June 24. We'll have a further hearing July 22 at 1:30  
21 p.m. All right. That's it for today on -- regarding the  
22 city's objection to the claims of Mr. Hall. Thank you. Now,  
23 that was the only matter left regarding the thirteenth  
24 omnibus claim objections, so --

25 MR. IMBROGNO: Your Honor, Ms. Dolcourt will be

1 taking care of the seventeenth omnibus objections.

2 THE COURT: Yes.

3 MR. IMBROGNO: I believe those are next.

4 THE COURT: All right.

5 MR. IMBROGNO: Thank you.

6 MS. DOLCOURT: Good afternoon, your Honor. Tamar  
7 Dolcourt from Foley & Lardner on behalf of the city regarding  
8 the seventeenth omnibus objection to claims.

9 THE COURT: Yes. All right. Good afternoon. Go  
10 ahead. What would you like to say then?

11 MS. DOLCOURT: Thank you. Well, at the outset, we  
12 want to clarify that the seventeenth omnibus objection seeks  
13 only to reclassify claims which were marked on the proof of  
14 claim as administrative claims. It does not seek to disallow  
15 any of these claims at this time. The city has not  
16 undertaken substantive reviews of each of the claims but will  
17 do so in the future if it's determined to be appropriate.

18 And just at the outset, in a Chapter 11 case an  
19 administrative claim is a claim that's necessary to preserve  
20 the estate. In a Chapter 9 case, there is no estate, and so  
21 Section 541, which discusses the creation of a bankruptcy  
22 estate, is actually not applicable in Chapter 9. It's not  
23 mentioned in Section 901. Consequently, courts have limited  
24 the definition of an administrative expense in Chapter 9 to a  
25 very narrow slice of expenses directly related to the

1 administration of a bankruptcy case, and so to the extent  
2 that parties filed responses to the claim objection, the city  
3 believes that the claims that were filed are not  
4 administrative expenses in a Chapter 9 context, and so I'd  
5 like to go through each of the responses that we received in  
6 order.

7 The first response we received was filed by Laurence  
8 Woody White. I don't know if Mr. White is here today.

9 THE COURT: Is Laurence Woody White present, or is  
10 there anyone here on his behalf? I hear nothing. Mr. White  
11 has not attended today's hearing apparently. You don't know  
12 why?

13 MS. DOLCOURT: I don't believe he resides in the  
14 State of Michigan anymore. He's a retiree. It appears from  
15 his claim that he's been retired for over 20 years from the  
16 city. It appears to us that his claim is --

17 THE COURT: But you don't know specifically why  
18 he --

19 MS. DOLCOURT: I don't know. He didn't contact me.

20 THE COURT: All right.

21 MS. DOLCOURT: We did mail him a copy of our reply  
22 brief.

23 THE COURT: You did mail it?

24 MS. DOLCOURT: We did mail him a copy --

25 THE COURT: Yeah. All right.

1 MS. DOLCOURT: -- of the reply brief, but he did not  
2 contact me --

3 THE COURT: Yeah. Go ahead.

4 MS. DOLCOURT: -- regarding the hearing. In any  
5 event, Mr. White's claim appears to be related to the pension  
6 that he is getting from the City of Detroit, and, as such, it  
7 is not an administrative claim. His pension appeared to have  
8 arisen in 1993 when he retired from the city, and he is still  
9 getting his pension checks. And the pension issues are  
10 outside the claims administration process, in any event, so  
11 even if we reclassify the claim from an administrative claim,  
12 it still doesn't affect his entitlement to a pension, so we  
13 believe that it is not an administrative expense and should  
14 be reclassified to a pension claim, which is dealt with under  
15 the plan separately from the claims administration process.

16 THE COURT: Your objection to claim proposes to  
17 simply reclassify it, though, to general unsecured.

18 MS. DOLCOURT: It should be -- it should be, more  
19 specifically, general unsecured or the other appropriate  
20 claim under the plan because a pension claim is a  
21 different -- it is not a Class 14 general unsecured. There's  
22 a different class, and I believe that Mr. White's claim, now  
23 that we've determined it's a pension claim, should be  
24 reclassified into that category.

25 THE COURT: Which category?

1 MS. DOLCOURT: I'm not entirely certain. I believe  
2 it's Class 12, but I would have to go look at the plan, but  
3 it's a pension claim, so it's not really within the claims  
4 administration process. The pension claims have been handled  
5 separately throughout the case.

6 THE COURT: Well, Mr. White has no notice of your  
7 request that you just made; right? The notice he has of your  
8 claim objection is to reclassify his claim as a general  
9 unsecured claim.

10 MS. DOLCOURT: Correct. That's true. However, a  
11 pension claim under the plan is treated differently and I  
12 would say likely more favorably than a general unsecured  
13 claim, so I don't believe he's prejudiced by that.

14 THE COURT: All right. Hold on. Can we tell -- can  
15 you tell from the documentation whether Mr. White is a  
16 retired police or fire person?

17 MS. DOLCOURT: I don't believe that he is. His  
18 claim said building and safety.

19 THE COURT: All right. So you think he would be in  
20 the GRS pension?

21 MS. DOLCOURT: I believe he's in the general  
22 retiree, yes. His certificate, which he filed with his reply  
23 brief -- it's pages 4 and 5 of his reply, which is Docket  
24 9857 -- it shows his recognition of being in the building and  
25 safety engineering department, and his certificate of



1 retirement says he's in the building division, and it's --

2 THE COURT: All right. So that would be, it looks  
3 like -- I mean it appears that would be Class 11.

4 MS. DOLCOURT: Class 11. I apologize.

5 THE COURT: Well, you're going to prepare an order,  
6 and you can verify that you agree with me that it's Class 11,  
7 but I'll go ahead and agree to your request to reclassify his  
8 claim rather than as a general unsecured claim but as --  
9 rather, as a general GRS pension claim, which appears is  
10 Class 11.

11 MS. DOLCOURT: Thank you.

12 THE COURT: All right. So go on.

13 MS. DOLCOURT: The next response we received was  
14 from Gretchen Smith, and Ms. Smith is here today.

15 THE COURT: All right. Ms. Smith, would you come  
16 up, please? Good afternoon. You are?

17 MS. SMITH: I'm Gretchen Rose Smith.

18 THE COURT: All right. Good afternoon, Ms. Smith.  
19 Ms. Dolcourt, we'll hear from you, and then we'll hear from  
20 Ms. -- anything Ms. Smith wants to say about the city's  
21 objection or that it seeks to reclassify her claim as a  
22 general unsecured claim.

23 MS. DOLCOURT: Thank you, your Honor. Ms. Smith  
24 filed a proof of claim in the case for several different --  
25 several different claims against the city on one proof of

1 claim form. It appears that there was a -- and Ms. Smith  
2 will certainly correct me if I'm wrong -- a bus accident in  
3 2011. Certain pieces of property which she may or may not  
4 own -- she said she wasn't sure -- that are located within  
5 the city and that another injury that occurred in November of  
6 2013 -- and I believe she also states a retirement claim, but  
7 that would be against Detroit Public Schools or involved with  
8 Detroit Public Schools, not the City of Detroit. With the  
9 exception of the injury that occurred in late 2013, these  
10 appear to be pre-petition claims, so they would not be  
11 administrative under -- you know, in any event, but, however,  
12 including the injury, none of them meet the definition of the  
13 limited administrative expense allowance under a Chapter 9;  
14 that is, an expense that is related directly to the  
15 administration of the bankruptcy case. So the city doesn't  
16 seek to disallow Ms. Smith's claims. The city only seeks to  
17 reclassify them from administrative to general unsecured.

18 THE COURT: All right. Ms. Smith, what would you  
19 like to say about this?

20 MS. SMITH: So far what she said is correct;  
21 however, I would like to give the Court some other factual  
22 and then other information that I didn't get a chance to  
23 share with her and I would like the Court to know about. The  
24 second claim is November 27, 2013, and I did file it with the  
25 city. The claim number is A27 -- or, yeah, A2750-005139,

1 and --

2 THE COURT: That's not a claim number. That's not a  
3 claim number.

4 MS. SMITH: Well, that's what they gave me, A32750-  
5 005139.

6 MS. DOLCOURT: Your Honor, if I may, that may be  
7 the -- that may be a city law department claim number, not a  
8 bankruptcy proof of claim number.

9 MS. SMITH: Right.

10 THE COURT: Yeah. This objection, seventeenth  
11 omnibus objection to claims that we're dealing with today,  
12 Ms. Smith, insofar as your claims are concerned, concerns  
13 only one of your claims that you filed as a proof of claim,  
14 and that's Claim Number 2730.

15 MS. SMITH: Excuse me. I have audio deafness, so  
16 could you speak just a little bit louder, and I can hear you  
17 better?

18 THE COURT: You have apparently filed several proofs  
19 of claim. There's only one of them that is the subject of  
20 this claim objection that I'm hearing today. That's Claim  
21 Number 2730. That's what I said. Are you able to hear me  
22 that way? Okay. All right. I'll try to keep my voice up  
23 for you there.

24 MS. SMITH: Thank you.

25 THE COURT: So that's the only claim that we're

1 talking about today, and the city wants to reclassify it  
2 from -- you claimed it as an administrative priority claim,  
3 and they're -- administrative expense claim, rather, and  
4 they're -- the city is saying, no, it should be general  
5 unsecured claim, so what do you want to say about that?

6 MS. SMITH: I'm not sure which topic the 2730 refers  
7 to. Is that the bus accident or --

8 MS. DOLCOURT: Yes. This is the one where -- your  
9 Honor, the basis for this claim says "Retirement DPS  
10 property, bus accident, lawsuit for all appropriate benefits  
11 and rights."

12 THE COURT: Do you have a copy of the proof of claim  
13 you can show her right there?

14 MS. DOLCOURT: Yes. Actually, I will give it to her  
15 right now.

16 THE COURT: It was attached to the city's reply  
17 filed last Thursday.

18 MS. DOLCOURT: Yes. So this is the basis.

19 MS. SMITH: Okay.

20 MS. DOLCOURT: Do you see where you've written that?

21 MS. SMITH: Okay. Um-hmm. I just wanted to clarify  
22 that the retirement DPS is Detroit Public Schools, not  
23 Department of Public Safety, and someplace in the paperwork  
24 it stated Workmen's Comp. Workmen's Comp and Medicare even  
25 believes that, but this is not true. I did not injure myself

1 at work at Detroit Public Schools. My concern in the proof  
2 of claim is about my retirement benefits.

3 And then also in the paperwork I got from -- while  
4 the bankruptcy was going on and afterwards, the IRS wants me  
5 to claim attorney fees that I received. I didn't receive any  
6 attorney fees nor am I an attorney, and I'm told by the IRS I  
7 have to deal with the city with this, so there's a lot of,  
8 you know, untrue information.

9 And then, further, the bus accident was July 1st,  
10 2011, but the police report said June 31st, which we all know  
11 there's no 31 days in June, at the top, and then at the  
12 bottom of the police report of the bus accident it said July  
13 1st, 2011, so that needed to be clarified. And then the city  
14 had May 10th, 2011, for this bus accident, so somehow a lot  
15 of this didn't get processed right. It got all pushed into  
16 Medicare. Medicare, as far as I know, is working on it, but  
17 they're still confused because of all these, you know, false  
18 factors, and I just felt I should make the Court aware of  
19 them today.

20 And about the properties, I apologize. I don't have  
21 the addresses of the paperwork that was sent to me, but, as  
22 far as I know, there's only two possibilities. The reason I  
23 don't know if they're mine or not is because they're  
24 unfamiliar properties. I called Orlans, the law firm that  
25 sent the property information, and they would not give me any

1 information nor would they make an appointment with me to  
2 look at the paperwork that I got. And so my statement to  
3 them was I don't know if this is my property. My mother's  
4 father had a lot of property in Detroit. She might have put  
5 some in my name and didn't tell me about them yet. I don't  
6 know. The other possibility is that I was a severe victim of  
7 identity theft and that it's possible that someone used my  
8 name, my Social Security number, my financial profile, got a  
9 mortgage, lived in the house, made the payments, and I knew  
10 nothing about it. I know my brother sent me some papers from  
11 the IRS about one property that they said that they looked  
12 into -- the IRS looked into and knew that I did not ever live  
13 in it. I said, "Well, how did you know?" And they said, "We  
14 need you to fill out this affidavit by a certain day and send  
15 it back." I did, and I don't know how my brother got the  
16 paperwork sent to him, but he sent it to me, and then it  
17 said -- or they said, "We know because there's no such  
18 address," so it's not surprising to me that there are some  
19 properties in my name that I don't know about. A few months  
20 ago I was told that my grandfather's 100-year property --  
21 well, I call it a celebration because he asked me to tell the  
22 story in 100 years, but he had several properties in Detroit  
23 that he let people use to build their businesses, and I was  
24 told in December when I turned 55 that I was to start  
25 handling this, and then I remembered him walking me around.

1 Now, I've had to make a list of the property numbers and  
2 streets, but I'm pretty sure it does not include the ones  
3 that Orlans sent me, but Orlans does have a member of the St.  
4 Thomas Armenian Orthodox Church that my grandparents did the  
5 ground digging for. He's a lawyer there, and so it's  
6 possible that they asked him to do the properties, some of  
7 them, and put them in my name, so I don't know what to do  
8 with all that. I just know that it was a part of the  
9 bankruptcy paperwork that came to me when that process was  
10 going on.

11 And then the last topic was just that there's some  
12 missing care providing checks, about a quarter million  
13 dollars, \$6,000 a month by 42 months. I received one July  
14 2nd, 2012, another one October 17, 2012, and then part of one  
15 January of 2014 from Christopher Trainor's office, whom I  
16 fired, not on the bus accident case any longer. So I don't  
17 know what happened to the rest of them. I've made a police  
18 report. As far as I know, it's still under investigation. I  
19 tried to find out who cashed the checks from the city, but  
20 the city redirected me to Freedom of Information. I filed  
21 that. I got a name and number. Then they denied me answers  
22 to those questions and wants me to appeal it. And I just  
23 think this is all a lot of, you know, paperwork that could be  
24 resolved, you know, very -- actually, if we met, you know,  
25 went over all this, I think it could be -- we could all move

1 forward, you know, and that's what I'm looking to do, so  
2 other than that, I guess I would like to just ask you what  
3 you feel is appropriate. I'm not a lawyer.

4 THE COURT: All right. Thank you. Ms . Dolcourt,  
5 you can reply briefly if you wish to.

6 MS. SMITH: Louder. Who did you say?

7 THE COURT: I said Ms. Dolcourt can reply briefly if  
8 she wishes to to what you just said.

9 MS. DOLCOURT: Your Honor, I think Ms. Smith raises  
10 a host of issues that may need further investigation by the  
11 city, but, in any event, none of the issues she raises appear  
12 to be administrative expense claims within the definition of  
13 an administrative expense claim in Chapter 9, and so today we  
14 would merely ask the Court to reclassify her claim as a  
15 general unsecured claim, and then, you know, to the extent  
16 that further investigation is necessary, we will certainly do  
17 that in the further process of the claims resolution.

18 THE COURT: Well, all right. Thank you. The issue  
19 before me today, properly before me today, is quite limited  
20 with respect to the claim of Ms. Smith here. It's limited to  
21 the city's objection to Claim 2730 filed by Ms. Smith, a copy  
22 of which claim is attached to the reply filed by the city  
23 last Thursday at Docket 9868, and the only issue before me  
24 today is whether that claim should be reclassified as a  
25 general unsecured claim and no doubt subject to further



1 proceedings in the future within that classification because  
2 it is not properly classified as it was filed as an  
3 administrative expense -- an allowable administrative expense  
4 or administrative claim. I agree with the city's argument on  
5 that. Ms. Smith has a good deal to talk about with counsel  
6 for the city or appropriate personnel at the city regarding  
7 the ultimate resolution of her various claims filed in this  
8 case, it appears, and she can certainly do that in the  
9 future, and the city will have to consider further Ms.  
10 Smith's claim as a general unsecured claim and what  
11 objections, if any, need to be filed to the merits or  
12 substance of those claims. The issue for today, though, is  
13 simply whether the claim needs to be reclassified because  
14 it's not an appropriate administrative claim. I agree with  
15 the city that it's not. Nothing in the claim or in what Ms.  
16 Smith has said about her various claims in today's hearing  
17 indicates otherwise, and I conclude that the claims of Ms.  
18 Smith have no basis as an administrative expense. They are  
19 not claims for the actual and necessary costs or expenses  
20 incurred in connection with the actual administration of the  
21 Chapter 9 case. I agree with the city's argument that there  
22 is no estate under Section 541 in a Chapter 9 case, and  
23 Chapter 9 -- in Chapter 9 cases, the scope of administrative  
24 expenses is, therefore, narrow, narrower than it is in a  
25 normal bankruptcy case. The concept under Section

1 503(b)(1)(A) that allowed administrative expenses include the  
2 actual and necessary costs and expenses of preserving the  
3 estate does not apply, per se, as broadly in a Chapter 9 case  
4 as it would in a different chapter bankruptcy case, and so  
5 the claims of Ms. Smith do not meet the requirements to be an  
6 allowed administrative expense for those reasons, so the  
7 city's objection, which seeks reclassification of the claims  
8 to general unsecured claims, are sustained, so, Ms. Dolcourt,  
9 include that relief in your -- the order you're going to  
10 prepare.

11 MS. DOLCOURT: Yes, sir.

12 THE COURT: Thank you, Ms. Smith. Go on, Ms.  
13 Dolcourt.

14 MS. DOLCOURT: Okay. The next response that we  
15 received, your Honor, was a joint response filed by Dennis  
16 Taubitz and Ms. -- Mr. Dennis Taubitz and Ms. Irma  
17 Industrius. I believe they're on the phone.

18 THE COURT: Yes. Mr. Taubitz and Ms. Industrius,  
19 are you still there, and can you hear me?

20 MS. SMITH: Thank you, your Honor.

21 MR. TAUBITZ: Yes.

22 MS. INDUSTRIUS: Yes, your Honor. We're here.

23 THE COURT: All right. We're finally to your  
24 claims, I think, now, so, Ms. Dolcourt, go on. What would  
25 you like to say about this?

1 MS. DOLCOURT: Well, your Honor, as I've already  
2 stated, these, again, are claims that the city is only  
3 seeking at this time to reclassify, not to disallow, and so  
4 with respect to Mr. Taubitz and Ms. Industrius' claims, the  
5 city is investigating the claims that they make. Mr. Taubitz  
6 alleges that he's owed payments for wages for the entire  
7 calendar year of 2013, and the city is looking into that  
8 right now. Ms. Industrius claims she is entitled to a bonus  
9 for her employment. We don't know from her pleadings when  
10 that bonus entitlement supposedly arose, so the city is also  
11 looking into that, but it's a little bit more difficult to  
12 determine. For example, we don't know if any of that claim  
13 is a post-petition claim versus a pre-petition claim. We  
14 just have no information, so we're looking into it, but today  
15 what we're looking to do is reclassify the claims from  
16 administrative claims to general unsecured claims because,  
17 again, the definition of administrative claims in the  
18 bankruptcy is so narrow -- in a Chapter 9 is so narrow that  
19 it's only those claims related to the actual administration  
20 of the bankruptcy, and we do not believe that Mr. Taubitz and  
21 Ms. Industrius' claims meet that standard.

22 In addition to that, the bar date notice did provide  
23 a method for filing administrative claims, which was not  
24 followed in this case, and Mr. Taubitz and Ms. Industrius  
25 filed a surreply this morning stating that they never

1 received this bar date notice, which had the -- which had the  
2 instructions for filing an administrative claim. We hadn't  
3 yet received from them any objection to service, but we did  
4 go back and check our records this morning, and both of them  
5 were served on November 29th, 2013, by the city's claims  
6 agent, Kurtzman Carson. The docket reference is 2337. It is  
7 the certificate of service for everybody who got a bar date  
8 notice package. It is approximately a 2,500-page document.  
9 Mr. Taubitz' name appears on page 2,296 of that document, and  
10 Ms. Industrious' name appears on page 488 of that document, so  
11 they did receive the bar date notice. And the claim form  
12 that they mention in the surreply specifically states not to  
13 use this claim form for an expense that arises after the  
14 concurrence of -- commencement of the bankruptcy, so the city  
15 seeks to reclassify it for two reasons: first, that it was  
16 not properly filed as an administrative expense claim if it  
17 is one, and, second of all, we don't believe that it is one  
18 under the more narrow definition of the Bankruptcy Code.

19 THE COURT: Now, you're referring to the claims bar  
20 date order in part here, Docket 1782, filed November 21,  
21 2013. You cited paragraph 5, I believe --

22 MS. DOLCOURT: Yes, your Honor.

23 THE COURT: -- of that order, which says, among  
24 other things, that all administrative claims under Section  
25 503(b) other than Section 503(b)(9) claims and the

1 administrative portion of rejection damages claims shall not  
2 be deemed property if asserted by proof of claim; right?

3 MS. DOLCOURT: Correct, your Honor.

4 THE COURT: I don't have the bar date notice that  
5 went out to -- by mail from the agent to everyone. Did that  
6 say these things as well?

7 MS. DOLCOURT: Yes. The order was included within  
8 the notice as well as a proof of claim form.

9 THE COURT: So a copy of the claim bar date order  
10 was actually served with the notice?

11 MS. DOLCOURT: I believe so. I believe it was. If  
12 it was not, they did -- I believe KCC also did a summary of  
13 the order because the order was lengthy explaining each type  
14 of claim and the deadlines for each claim and the process.

15 THE COURT: Do you have a docket number for the  
16 bar -- the claim bar notice that was served on everyone?

17 MS. DOLCOURT: You know, I don't, your Honor. I'm  
18 sorry.

19 THE COURT: All right. You didn't cite to that in  
20 your papers. I think you only cited the bar date -- claims  
21 bar order, paragraph 5, so anything else you want to say?

22 MS. DOLCOURT: Your Honor, I think that we've made  
23 our arguments in the brief, and, as I mentioned before, you  
24 know, we're still -- the city is still investigating these  
25 claims specifically to determine, you know, what may have

1 happened and what -- and where they arise, but for today  
2 we're really only seeking the reclassification of the claim.  
3 We're not looking to argue the merits of the claim at this  
4 point.

5 THE COURT: Like how does Mr. Taubitz work for an  
6 entire calendar year without getting paid anything?

7 MS. DOLCOURT: That's certainly a question, your  
8 Honor.

9 THE COURT: All right. Mr. Taubitz and Ms.  
10 Industrious, we'll hear from you now, whichever of you wishes  
11 to go first.

12 MR. TAUBITZ: Yes. I guess first is the -- all the  
13 other employees got paid. I'm assuming they were paid on the  
14 basis it was an administrative expense, and, therefore, if I  
15 wasn't paid, my claim should also be treated as an  
16 administrative expense because it allowed the debtor to  
17 function.

18 As to the bar due date, I guess we need to look at  
19 this new information that now there is a docket number that  
20 indicates service. Our recollection is that we were not  
21 served and, further, that the document itself that's provided  
22 by the city, the proof of claim form, indicates an option of  
23 an administrative priority expense. It's a little  
24 disingenuous to send a 500-page -- alleged 500-page document  
25 that disallows that while you send a one-page document that

1 does allow that.

2 MS. INDUSTRIUS: And, your Honor, if I may, Irma  
3 Industrius. And my position is that I understand -- I'm a  
4 creditor of debtor. I think it's stated that I didn't -- did  
5 not include specific time frame for my proof of claim, and  
6 I'm requesting leave of the Court and the Court's indulgence  
7 for me to amend my proof of claim to indicate the specific  
8 dates and also to correct the amount that's on there because  
9 it indicates that it's 13,500, but upon further review of my  
10 proof of claim, I believe that it's less than that.

11 THE COURT: Ms. Industrius, you broke up quite a bit  
12 there in what you just said, but I take it from what you said  
13 I did hear you say that you request leave of Court to amend  
14 your proof of claim. You can file an amended proof of claim.  
15 If the city objects to it, in part, on the ground that it  
16 was -- it's not timely, we'll have a hearing on that, and the  
17 parties can argue about whether or not the Court should deem  
18 the amended claim to relate back to the date of the original  
19 proof of claim that you filed -- that's one of the issues  
20 that always comes up in that kind of situation -- or whether  
21 the Court otherwise should deem the amended claim as  
22 allowable notwithstanding the timing of its filing, so, you  
23 know, you don't -- I'm not granting you specific leave. You  
24 don't need it. You just file the amended claim, and then --  
25 with the claims agent, and then if the city objects to it,

1 they object to it, and you respond, and we have a hearing.

2 Now, with respect to the -- is there anything else  
3 you wanted to say, Ms. Industrious?

4 MS. INDUSTRIUS: Your Honor, only that my position  
5 is that the claim that I'm requesting is in relation to my  
6 wages when I was an employee at the City of Detroit,  
7 specifically bonuses, and I feel that that's part of the  
8 administrative operation that's part of the Court while they  
9 were in bankruptcy because I performed services for the city  
10 and was entitled to those wages in the form of a bonus, and  
11 that's all.

12 THE COURT: All right. Thank you. Ms. Dolcourt,  
13 did you want to reply briefly to these arguments?

14 MS. DOLCOURT: Your Honor, just as a point of  
15 clarification, Mr. Taubitz is correct that all the employees  
16 were paid during the course of the bankruptcy; however, they  
17 were not paid as an administrative expense. The city merely  
18 continued its payroll throughout the course of the case, and  
19 all of those payments were made in the ordinary course of  
20 business throughout the bankruptcy case, so to the extent  
21 that Mr. Taubitz and Ms. Industrious may have a claim that  
22 wasn't paid for some reason, you know, the city is  
23 investigating that and will determine that further, but none  
24 of the wage claims were treated as administrative expenses.  
25 They were just paid in the ordinary course as the city kept



1 operating.

2 THE COURT: Well, if someone worked and wasn't paid  
3 a wage during the pendency of the case, what recourse do they  
4 have against the city to get paid? Do they have any  
5 recourse?

6 MS. DOLCOURT: Well, your Honor, I believe that if  
7 it was a post-petition amount, it would be an ordinary course  
8 expense under the plan. There's a -- there was provision for  
9 the city to keep paying its ordinary course expenses, and it  
10 did so. If there was a mistake, the city will investigate  
11 that and determine the appropriate relief, but it's not  
12 necessarily a claims administration issue. It could well be  
13 a payroll and, you know, wage department issue that's just  
14 outside of this process, but because Ms. Industrious and  
15 Mr. Taubitz filed claims as administrative claims and the  
16 city doesn't believe them to be administrative claims, you  
17 know, we've sought to reclassify it.

18 THE COURT: All right. Well, thank you. While the  
19 issue of what becomes of these claims ultimately and on a  
20 final basis remains to be seen and isn't being decided today,  
21 I am going to sustain the city's objection to these claims --  
22 the limited objection that was stated, which is that the  
23 claims should be reclassified out of the administrative claim  
24 category and into the general unsecured claim category. I  
25 agree they're not properly classified as administrative

1 claims. The argument of Mr. Taubitz and I think perhaps also  
2 Ms. Industrius that the -- to the extent they worked as  
3 employees of the city post-bankruptcy petition and were not  
4 paid for that work or, in the case of Ms. Industrius, earned  
5 a bonus, she says, for such work and wasn't paid, those are  
6 not allowable as administrative expenses under Section  
7 503(b), including 503(b)(1), because they are not expenses  
8 incurred in connection with the actual administration of the  
9 Chapter 9 case. It is not sufficient in a Chapter 9 case to  
10 obtain an allowed administrative expense merely to show and  
11 argue that an employee worked for the municipality and  
12 through their work was part of a workforce that allowed the  
13 city to continue to function while it was in Chapter 9  
14 bankruptcy, and so the city's objection in the seventeenth  
15 omnibus objection is sustained as to both of these claims.  
16 And, Ms. Dolcourt, I'll ask you to include that in the order  
17 that you're going to prepare.

18 None of this, of course, is to say that neither --  
19 or that either of these claimants, Mr. Taubitz or Ms.  
20 Industrius, aren't necessarily entitled to be paid anything  
21 by the city. It simply concerns classifying their claims out  
22 of the administrative claim category, and that's what the  
23 ruling today does. So does that complete the seventeenth  
24 omnibus objection matter, Ms. Dolcourt?

25 MS. DOLCOURT: Your Honor, just one more thing. Ms.

1 Debra Gilbeaux filed a motion with the Court seeking  
2 additional time to file a response on May 22nd, and the Court  
3 subsequently denied that motion, but Ms. Gilbeaux is here  
4 today, and I wanted to bring that to the Court's attention.

5 THE COURT: Ms. Gilbeaux, you can come forward,  
6 please. No.

7 MS. GILBEAUX: I'm Ms. Gilbeaux.

8 THE COURT: Ms. Gilbeaux, Debra Gilbeaux.

9 MS. GILBEAUX: I am Debra Gilbeaux.

10 THE COURT: Come on up to the podium, please.

11 MS. GILBEAUX: Okay. Good afternoon.

12 THE COURT: Good afternoon, Ms. Gilbeaux. Perhaps  
13 you didn't see it, but I denied the motion by an order filed  
14 yesterday, your motion that you filed on Friday --

15 MS. GILBEAUX: The 21st.

16 THE COURT: -- last Friday in which you --

17 MS. GILBEAUX: Yeah.

18 THE COURT: -- asked for an additional five days to  
19 file a response to the debtor's objection to the seventeenth  
20 omnibus objection seeking to reclassify your claim, so you  
21 did not file a timely response to the city's objection to  
22 claim that seeks to reclassify your claim.

23 MS. GILBEAUX: Correct.

24 THE COURT: Now, you're here. I'll let you talk.  
25 What do you want to say?

1 MS. GILBEAUX: I have a legitimate, I believe, claim  
2 against the city. I am still employed with them. It is  
3 about wages. It started out with wages before the  
4 bankruptcy. They agreed that they owed me back pay wages,  
5 and in my pursuit of the back pay wages that they -- the  
6 city's employee in the human resource department, Renee  
7 Laster, Benita Cheatom at that time, 2009, said that they  
8 agreed that they owed me a difference between what I was  
9 earning and what they actually had paid me, but -- and when I  
10 talked to another employee that was in the finance  
11 department, Maristella Lane, she said, "The city owes you  
12 somewhere around \$12,000, but I don't know when you'll see  
13 it," is her response to me, and what I got from that \$12,000  
14 was \$5,000. And then I continued in pursuit of that money on  
15 my own, and subsequently I was terminated in the pursuit of  
16 what they owed me, which they stated in writing they owed me,  
17 so it kept being this -- you know, in my pursuit, then they  
18 terminated me on an unjust bogus charge of me bringing a  
19 knife to work, and so then they start owing me more money  
20 after the termination when they didn't pay what was a result  
21 of the arbitration award, so I just -- and I'm still working  
22 with them, so I'm still walking that delicate balance of  
23 trying to work for my employer and give them a, you know,  
24 honest day's work every day and do what they ask me to do and  
25 still know that they owe me money, which they never

1 addressed, so it's -- that's where I am with them, and I  
2 believe they're decent employees. I find that, you know, I  
3 get along with people pretty much. I respect them. I, you  
4 know, hope they respect me, but they have not paid me what  
5 they owed me. And every time I've owed anyone anything, they  
6 come after me, and they garnish or want to do whatever they  
7 have to do to get their money, but, conversely, I can't get  
8 mine, it seems, from people that claim that -- you know, that  
9 they're honorable or they're lawyers or they take oaths to be  
10 honorable, but they haven't been honorable with me.

11 THE COURT: All right. Ms. Dolcourt, did you want  
12 to respond briefly?

13 MS. DOLCOURT: Again, like Ms. Smith's claim,  
14 Ms. Gilbeaux's claim has a lot of issues in it, which the  
15 city, as part of the claims resolution process, is looking  
16 at, and today we're only here to reclassify the claim from  
17 the administrative expense category to the general unsecured  
18 category, not to disallow the claim, so that's the only  
19 relief that we're seeking at this time. And we believe that  
20 the issues raised by Ms. Gilbeaux in her proof of claim  
21 involve pre-petition events with the city, and, therefore,  
22 they don't -- they wouldn't be administrative expenses in any  
23 event, but particularly in a Chapter 9 where they're not  
24 directly related to the administration of the case.

25 THE COURT: Well, first point that I'll make in

1 ruling here is Ms. Gilbeaux did not timely file a written  
2 response to the claim objection. The response -- written  
3 responses were due Wednesday of last week, May 20. Instead,  
4 Ms. Gilbeaux filed two days after the deadline a motion --

5 MS. GILBEAUX: Next day actually, sir.

6 THE COURT: Ms. Gilbeaux, don't interrupt me.

7 MS. GILBEAUX: I beg your pardon.

8 THE COURT: You're done talking now.

9 MS. GILBEAUX: Sorry.

10 THE COURT: Ms. Gilbeaux filed a motion on Friday,  
11 May 22, asking for -- two days after the deadline, asking for  
12 an additional five days to file a response. I denied that  
13 motion with a text order that I entered yesterday promptly  
14 after the motion came to my attention. The text order is at  
15 Docket 9880 dated May 26, 2015, and it states the reasons in  
16 detail why the Court denied the motion, and so Ms. Gilbeaux  
17 not having filed a timely response, written response to this  
18 claim objection, the claim objection will be sustained by  
19 default. I would add, however, that I've not heard anything  
20 in today's hearing in the oral statements by Ms. Gilbeaux  
21 that would suggest that she has any claim that is properly  
22 classified as an administrative claim in this Chapter 9  
23 bankruptcy case as opposed to a general unsecured claim, and  
24 so there is -- again, I would note that the only issue today  
25 and the only relief being granted against Ms. Gilbeaux's

1 claim today is that it's being reclassified out of the  
2 administrative claim category and into the general unsecured  
3 claim category, so, Ms. Dolcourt, include that in your order.

4 MS. DOLCOURT: Yes. Thank you, your Honor.

5 THE COURT: The city's objection is sustained. Now,  
6 I saw a gentleman raise his hand at the back there.  
7 Apparently you want to say something.

8 MR. WHITE: Yes, sir.

9 THE COURT: You got to come up to a microphone.

10 MR. WHITE: I've traveled here from West Virginia to  
11 attend this court.

12 THE COURT: You got to come up to a microphone, and  
13 then tell me who you are and why you think you should be  
14 speaking now.

15 MR. WHITE: I'm Claimant 2252, Laurence White, from  
16 West Virginia, and I arrived here last night. And I was a  
17 bit late getting here. I came in at 1:35, I think, so if I  
18 was to register with any of the ladies behind the counter  
19 there, I missed out on that to get on the document here  
20 today, but I'm having trouble understanding why I'm even on  
21 this list. I worked for 23 years and 7 months with the City  
22 of Detroit, received a certificate of appreciation from the  
23 city council and also from building and safety engineering as  
24 well as the city engineering department because I worked 23  
25 years and 7 months for the City of Detroit. I've been having

1 trouble hearing most of the proceedings here, so I don't know  
2 if you called --

3 MS. DOLCOURT: We did call your name, Mr. White.

4 THE COURT: All right.

5 MR. WHITE: I didn't hear it then.

6 THE COURT: All right. Mr. White, we did call your  
7 name, and I asked if you were here, and we heard nothing.

8 MR. WHITE: I didn't hear that.

9 THE COURT: And I ruled on the claim, the city's  
10 objections to your claim in which they seek to reclassify  
11 your claim actually as a Class 11 pension -- general retiree  
12 pension claim under the confirmed plan instead of an  
13 administrative claim -- an administrative expense claim. And  
14 I already ruled then that that was correct and proper and  
15 that that would be done, so the only effect on your claim  
16 today from this ruling is that it's going to be classified  
17 into a different class under the confirmed plan, Class 11  
18 general retiree pension claim class.

19 MR. WHITE: Okay.

20 THE COURT: It's not classified properly as an  
21 administrative expense, so that's it. Anything to add, Ms.  
22 Dolcourt?

23 MS. DOLCOURT: No, your Honor. Just to be clear to  
24 Mr. White, this doesn't affect your entitlement to a pension.  
25 It's just the way the form was filled out. We're just



1 reclassifying your claim as a pension claim.

2 MR. WHITE: Okay. So that was done in error or  
3 misunderstanding or --

4 MS. DOLCOURT: I think there might have been an  
5 error in the way the form was filled out.

6 MR. WHITE: Okay.

7 THE COURT: All right. Thank you.

8 MR. WHITE: All right. Thank you.

9 THE COURT: Does that finish the seventeenth omnibus  
10 claim objections?

11 MS. DOLCOURT: It does, your Honor.

12 THE COURT: All right. So, Ms. Dolcourt, I'll ask  
13 you to prepare and submit a proposed order reflecting the  
14 rulings that I've made today. I assume that, like the  
15 other -- as with the other claim objections in which a  
16 certificate of no response was filed this morning, this one  
17 has a certificate of no response, and you already submitted a  
18 proposed order which sustains the objections as to all of the  
19 parties other than the ones who had filed responses.

20 MS. DOLCOURT: Yes, exactly, your Honor.

21 THE COURT: All right. So submit this as an  
22 additional order which deals with -- specifically with the  
23 claims that were heard and ruled on today in this hearing.

24 MS. DOLCOURT: Yes, your Honor. Thank you.

25 THE COURT: I'll waive presentment of that order,

1 and you submit it. I'll review it, and we'll get it entered.

2 MS. DOLCOURT: Thank you so much. I appreciate it.

3 THE COURT: Thank you. Yep. Thank you. All right.  
4 I believe that brings us to the status conference -- further  
5 status conference.

6 MS. DOLCOURT: Your Honor, I apologize. I was just  
7 informed that one of the other claimants on the seventeenth  
8 omnibus objection is here but did not file a written  
9 response, Ms. Deborah Zachary.

10 THE COURT: Deborah who?

11 MS. DOLCOURT: Ms. Deborah Zachary. Her claim is  
12 Number 1860.

13 THE COURT: Well, she didn't file a written  
14 response. The claim objection is sustained. That's it.

15 MS. DOLCOURT: Thank you, your Honor.

16 THE COURT: We're going to hear now the further  
17 status conference regarding the city's objection to the  
18 claims of the coalition of Detroit unions and AFSCME Council  
19 25 and its affiliated Detroit local. All right. So good  
20 afternoon.

21 MR. MACK: Good afternoon.

22 MR. WILLEMS: Good afternoon, your Honor.

23 THE COURT: So we have Mr. Swanson, Mr. Mack, and --

24 MR. WILLEMS: Mr. Willems.

25 THE COURT: Willems.

1 MR. WILLEMS: John Willems. I'll be doing the  
2 arguing today on behalf of the city.

3 THE COURT: All right. And you entered your  
4 appearance earlier.

5 MR. WILLEMS: Well, arguing. The commentary.

6 THE COURT: Okay. So, Mr. Willems, I read the joint  
7 status report that the parties filed last week, the 20th.  
8 You don't seem to be really much farther than you were the  
9 last time we had a status conference.

10 MR. WILLEMS: Yeah, your Honor. I'm sure we  
11 disappointed you. It's not as joint as you might have hoped.  
12 You did ask us to discuss and get together with respect to a  
13 plan for how to go forward on these claims. The city has  
14 made a proposal. AFSCME has made its proposal. They're kind  
15 of distinct, but what I'd like to do is, if I may, make the  
16 case for the city's approach, which is a mixed approach of  
17 taking some of these issues to a threshold legal review and  
18 mediating others. And the city's approach is based on the  
19 Court's order denying AFSCME's motion for abstention and the  
20 joint statement of open issues that was filed by the parties  
21 in the process -- in the abstention process, and it's really  
22 a natural and logical evolution out of that -- out of that  
23 process and out of the -- what the Court ordered and what the  
24 parties agreed to. So in the abstention order, the Court  
25 noted that -- and this was based on the joint statement filed

1 by the parties in that process -- that some number of these  
2 claims were susceptible to disposition on threshold legal  
3 issues, and I'm citing to the abstention order, Docket 9047,  
4 dated January 14th, 2015. And the Court said expressly on  
5 page 2, that statement, referring to the joint statement,  
6 reflects that the claims on which abstention is sought may be  
7 resolved through the Court's determination of certain  
8 identified legal issues. The Court concludes that the  
9 interests of efficiency and economy would best be served by  
10 deferring consideration of abstention until after it  
11 determines those legal issues, so that sets the stage for  
12 what the city is proposing here, so -- and notwithstanding  
13 AFSCME's claims of inefficiency, that litigation and  
14 mediating at the same time is counterproductive to the  
15 mediation process, this Court certainly believes, as it  
16 stated in that order, that deciding threshold legal issues  
17 best serves the interests of efficiency and economy.

18 THE COURT: Now, that order was entered by Judge  
19 Rhodes.

20 MR. WILLEMS: I'm sorry.

21 THE COURT: That order was entered by Judge Rhodes,  
22 as you know.

23 MR. WILLEMS: Correct.

24 THE COURT: And that was his view, and he didn't  
25 specify in his order what parts of the claim, what legal

1 issues he was talking about. You know, one could go back  
2 perhaps and read the briefs of the parties on the abstention  
3 motion and perhaps the joint statement and make educated  
4 guesses about that, but you think -- the city thinks, at  
5 least, that these issues that you've identified in your May  
6 20 joint report, paragraph 13, these parts of the claims are  
7 claims to which that reasoning applies. There may be  
8 threshold legal issues.

9 MR. WILLEMS: Yes. And, again, that's based on the  
10 joint statement. Our proposal is two-prong. One is that  
11 Claims 3, 4, 5, 6, 8, 9, 11, and 19 are those on which the  
12 Court should decide threshold legal issues and that the other  
13 two -- that there's another set, 10, 13, 14, 15, 16, 18, and  
14 20, that really need no further involvement by the Court  
15 because they've either been disposed of or they should be  
16 mediated. Now, of those in the joint statement, Claims 3, 5,  
17 6, 8, and 11, if you look at the joint statement -- I have a  
18 copy if you want to -- if you want it.

19 THE COURT: No. I have it.

20 MR. WILLEMS: Okay. So 3, 5, 6, 8, and 11 are  
21 claims in which the parties agreed in one fashion or another  
22 that the Court may decide preliminary legal issues and  
23 dispose of the claims one way or the other in that regard.  
24 We think that 4 is also susceptible to that process. And  
25 with respect to 9 and 19, our legal argument -- our legal

1 position on that is that the claims are insufficiently pled,  
2 and we are certainly open to consideration of mediation if we  
3 get more of -- a more definite statement as to the claims and  
4 the underlying damages and liabilities. Excuse me. So  
5 the -- what we're also proposing as part of the process is  
6 that we take those that are subject to threshold review and  
7 file a, quote, unquote, supplemental objection that brings  
8 together all the arguments and exhibits that have been made  
9 so far. When we took over this case, it took us awhile to  
10 figure out where everything was at, and, you know, to -- in  
11 the interest of efficiency and economy, I think it would aid  
12 the Court to see all these claims argued in a single -- in a  
13 single supplemental objection on each of these -- bringing  
14 all of the -- because right now they're spread over replies,  
15 objections. There's arguments in the motion for abstention,  
16 and it's going to take a fair amount of effort on the Court  
17 to sort of puzzle all that out.

18 In addition to that -- and I don't -- when I say  
19 "supplemental," I don't mean that we're going to load in a  
20 whole boatload of new arguments and exhibits and facts or any  
21 of that, but I don't want the Court to be -- think it's being  
22 misled. There are certainly some claims on which the city  
23 feels that some of the legal arguments may need to be  
24 refocused, some additional authority cited, and a few  
25 additional exhibits presented. Now, that is also imbedded in

1 the joint statement. In each of the -- in each of the claims  
2 where the parties agreed -- excuse me -- agreed to a  
3 threshold review, each party also left itself significant  
4 reservation to add more information, perhaps agree on a set  
5 of stipulated facts, but also perhaps, you know, undertake  
6 evidentiary hearings, if necessary, so there's nothing here  
7 that isn't already really part of the process, as was  
8 envisioned earlier on, nothing new, nothing that should  
9 surprise AFSCME, and it's our recommendation that we proceed  
10 this way, that this will help the parties and the Court  
11 focus -- the legal arguments focus on the facts and exhibits  
12 that are relevant and material to those legal arguments.

13 THE COURT: Well, what about stipulations? I  
14 thought from our discussion at the last conference that the  
15 parties thought they could agree to some stipulated facts  
16 that would streamline this process going forward. There's no  
17 stipulations filed yet. Are we going to -- if they're going  
18 to -- if there's a body or a group of facts that are relevant  
19 or that at least one side or the other thinks is relevant to  
20 these disputed matters that you want to brief now that the  
21 parties agree on, why don't we --

22 MR. WILLEMS: We're proposing that that --

23 THE COURT: -- why don't we get stipulations filed  
24 on that?

25 MR. WILLEMS: We've had -- we've exchanged proposed

1 stipulations. We've had one meeting to go over them. It was  
2 inconclusive, but we do have, I think, a number of material  
3 facts that we can stipulate to, and I think that's a process  
4 that needs to go forward and we should be able to conclude in  
5 fairly short order. I don't think that the stipulated --  
6 that the facts that we end up stipulating to are going to be  
7 all the facts that the parties want to present. They're  
8 going to be a portion, and they're going to be a significant  
9 portion, you know, and a lot of them are going to include  
10 exhibits that are -- you know, they're sort of self-  
11 authenticating documents that are part of the progression of  
12 the sequence of events that are at issue here, so I think  
13 that's a viable process, and certainly our proposal, you  
14 know, assumes that that's going to go forward. I don't agree  
15 with AFSCME's statement in the joint statement that the  
16 intent was to have a threshold review only where all facts  
17 are stipulated to. If you look at the -- for example, what  
18 the parties said in -- excuse me -- what the parties said on  
19 Claim 3, for example, where there -- one of the claims where  
20 there was agreement on a threshold review, and in one set of  
21 words or language to that effect and in all the others where  
22 there was agreement, the parties basically said the city and  
23 AFSCME agree that the Court may first decide the threshold  
24 legal issues provided that the parties will work in good  
25 faith to present stipulated facts to aid in the determination



1 of the legal issues. The parties believe that an evidentiary  
2 hearing on the legal issues may be unnecessary, but each  
3 party reserves the right to either, one, request an  
4 evidentiary hearing if the parties cannot agree upon  
5 stipulated facts or, two, contest such request or otherwise  
6 argue that no additional disputed facts exist that would  
7 prevent the Court's determination of the legal issues. In  
8 addition, the parties will provide the Court with any  
9 additional information it may find necessary to render a  
10 decision, so what's contemplated in the joint statement and I  
11 think adopted by Judge Rhodes is that going forward there be  
12 stipulated facts, no requirement that all the facts be  
13 stipulated to and certainly no requirement that only  
14 stipulated facts will support a threshold review.

15 THE COURT: Well, let me ask you this. How do  
16 you -- how does the city want the filing of stipulations  
17 and -- not only regarding facts but also regarding exhibits  
18 that may be considered as admitted into evidence for purposes  
19 of the Court ruling on these issues, how does that fit in  
20 with the briefing schedule that you want me to set?

21 MR. WILLEMS: Well, we've proposed, you know, kind  
22 of a two-month period to present you with our proposed  
23 supplemental objections and a similar period for AFSCME to  
24 file a response, so, you know, if that's not a timeline the  
25 Court is agreeable to, then obviously we will abide whatever

1 the Court sets, but we do see it as -- you know, we file the  
2 objections. They get to respond. We get a short period to  
3 reply.

4 THE COURT: I know, but you talked about filing  
5 exhibits, too.

6 MR. WILLEMS: Yes.

7 THE COURT: And there are going to be facts --

8 MR. WILLEMS: Yes.

9 THE COURT: -- that are relevant to the legal issues  
10 and some of which are apparently undisputed and some of which  
11 might be disputed.

12 MR. WILLEMS: Correct.

13 THE COURT: So how do we get those in, the  
14 undisputed relevant facts or the undisputed facts that one  
15 side or the other thinks is relevant and the exhibits? The  
16 easiest way is by stipulation.

17 MR. WILLEMS: Sure.

18 THE COURT: If you think that's just not going to  
19 happen because the parties won't be able to agree on  
20 anything, fine.

21 MR. WILLEMS: Oh, no. We absolutely will be able to  
22 agree on some things.

23 THE COURT: Well, if you will be able to agree, then  
24 the question I asked is when does that stuff -- when do those  
25 stipulations get filed in relation to the briefs? What are

1     you proposing?

2             MR. WILLEMS:  Oh, well, along with the briefs.

3             THE COURT:  Well --

4             MR. WILLEMS:  I mean obviously we can do it  
5     separately, but our -- you know, our plan is put it all  
6     together in one package on each claim and submit it to you.  
7     That way you don't have to go looking through any other  
8     records.  Whatever the parties want to have you see is right  
9     there in front of you in one package.

10            THE COURT:  Well, the city would go first under  
11     paragraph 15 of your -- what you propose in the joint  
12     statement here of last week --

13            MR. WILLEMS:  Correct.

14            THE COURT:  -- on or before July 31, you said.  A  
15     separate brief regarding each of these eight issues?

16            MR. WILLEMS:  Well, yeah, a separate brief compiling  
17     all the different briefs that have already been presented  
18     that are already in the record, again, with probably some,  
19     you know, modification or refocusing.

20            THE COURT:  By "eight issues," I meant these eight  
21     numbered claims or subclaims.  You want to file a separate  
22     brief not to exceed 15 pages regarding each of these subclaim  
23     numbers?

24            MR. WILLEMS:  Yes.

25            THE COURT:  And what you're suggesting now is that

1 also the parties file any stipulations that they can agree to  
2 regarding facts or exhibits at the same time the city files  
3 its first set of briefs?

4 MR. WILLEMS: Yes.

5 THE COURT: And you're proposing July 31 to be that  
6 deadline for those things?

7 MR. WILLEMS: Yes, we are.

8 THE COURT: And then I see what you said in  
9 paragraph 13 about the other side responding and then reply  
10 briefs and so forth.

11 MR. WILLEMS: Correct.

12 THE COURT: So before we hear from counsel for the  
13 other side on these things, what about these remaining claims  
14 that you refer to in paragraph 17 of the joint statement from  
15 last week? You mentioned earlier that they don't -- and you  
16 said in the joint statement they don't need further court  
17 involvement at this juncture.

18 MR. WILLEMS: Well, there are at least three claims  
19 that are -- that I don't think there's any dispute should be  
20 mediated. The others -- there is some, I guess, ambiguity  
21 between the parties still as to whether or not they may have  
22 been resolved by other processes. We're still looking into  
23 that. If they are -- if they have not been, then the city is  
24 agreeable to introduce those into the mediation as well.

25 THE COURT: Well, do you want to be a little more

1 specific about mediation?

2 MR. WILLEMS: Well, we've had some discussion about  
3 what the mediation process is, but, frankly, it hasn't gotten  
4 very far. Obviously we need to come to a decision on a  
5 mediator, some ground rules for the presentations to the  
6 mediator, but I don't think either of us can stand here and  
7 say that we've had a detailed discussion as to what that  
8 process will be.

9 THE COURT: So is it your view the parties are not  
10 ready for the Court to enter any sort of mediation order at  
11 this point?

12 MR. WILLEMS: I would say that that's probably  
13 correct, yes. Unless it's an order that says the parties  
14 shall mediate and says nothing more, we would not be ready.

15 THE COURT: What good is that?

16 MR. WILLEMS: Yes, exactly.

17 THE COURT: All right. Anything else you'd like to  
18 say before we hear from the other side?

19 MR. WILLEMS: I think I've pretty much said what I'm  
20 going to say. I'd like to reserve some rebuttal if --

21 THE COURT: All right. Mr. Mack.

22 MR. MACK: Thank you, your Honor. Your Honor, it  
23 was 15 months ago when these proofs of claim were initially  
24 filed, 12 months ago when the city filed its objections to  
25 these claims. I've got a great deal of respect for Mr.

1 Willems. We've worked together in the past on other labor  
2 cases. I don't think either of us are very familiar with  
3 this courtroom here, but I'm quite disturbed to hear that  
4 there's a suggestion of additional briefing on claims that  
5 are now 15 months old where the city has already filed, I  
6 think, at least two on each of the claims, but beyond that,  
7 your Honor, let me get to why we have been suggesting  
8 mediation since when we first -- when we came before you back  
9 in -- a month and a half ago now that we had raised the  
10 prospect on April the 7th of mediation. And I was, again,  
11 pleasantly displeased -- or not pleasantly, but I was  
12 displeased over the fact that the city is suggesting that  
13 some of the claims should go to mediation and others go to  
14 litigation. Well, your Honor, we're dealing with one pot of  
15 money within Class 14. It's not going to get any bigger.  
16 It's going to be the same amount that's got to be divvied up  
17 by however many thousands of claimants. Litigating hammer  
18 and tong may get us a bit more here, a bit more there, but  
19 after 15 months of having these claims outstanding, the  
20 quickest easiest way is to make an effort to put everything  
21 on the table to see what can be resolved. The process of  
22 mediation, Judge, in its essence, if both sides agreeing  
23 we're going to --

24 THE COURT: What do you mean by "everything"?

25 MR. MACK: The claims we have, the claims we have on

1 appeal, the claims we -- we have two claims on appeal.

2 THE COURT: Are you including in that the -- what  
3 the city proposes in paragraph 13 of the last joint statement  
4 to brief, Claims 3, 4, 5, 6, 8, 9, 11, and 19?

5 MR. MACK: Yes.

6 THE COURT: So it's everything. Wasn't that already  
7 done with Judge Roberts?

8 MR. MACK: In a sense, yes, we did go through a  
9 very -- the process was over a couple of very long days.  
10 There was a hearing date set for two particular claims,  
11 Claims 7 and 17, and the decision between the parties at that  
12 point was let's make an effort to resolve everything before  
13 we go to an adversarial hearing over Claims 7 and 17, so we  
14 spent -- I think it was two or three very long days. I  
15 literally remember talking with one of the mediators at  
16 midnight over the resolution of these claims. And at the  
17 very end, due to a misunderstanding of what the numbers were  
18 worth, we were unable to settle, and it was -- by the way  
19 that things were structured, Judge Rhodes was going to issue  
20 a ruling and wanted things filed by -- I think it was three  
21 o'clock that day, and at noon we were in the chambers of one  
22 of the mediators, and we had this huge disagreement over what  
23 the numbers we were talking about meant, and so the mediator  
24 said, "Well, it's over. You've got three hours to get what  
25 you need to file," so, yes, there was an extensive mediation

1 process, but timewise, as far as the span of time, it was  
2 abbreviated. And as I mentioned, I've dealt with Mr. Willems  
3 before in other cases, and so when I saw that he was counsel  
4 for the city, I suggested mediation as a possible resolution.  
5 The problem with mediation -- part of it, though, your Honor,  
6 is if you think about it, mediation means, again, both sides  
7 coming to the middle, and litigation means both sides  
8 preserving that they want a hundred percent of what they're  
9 asking for. What the city is saying in its proposal is for  
10 the claims we like, we want a hundred percent of what we're  
11 asking for, but for the claims we don't like, we want you to  
12 agree to come to the middle, so I've got to go to my client  
13 and say, "Yeah, we're going to mediate some, but they're  
14 going to preserve their right to get everything they want on  
15 these others." How much success am I going to have on  
16 mediating the ones that we're asked to mediate for? It's not  
17 going to work if you get to cherry pick which claims you like  
18 and don't like, Judge. It's simply not. You have to put  
19 everything on the table and say -- now, you know, as much  
20 as -- you know, much respect Mr. -- the city apparently has  
21 for AFSCME's ability of persuading them to pay money on  
22 claims they don't think they owe any money, you know, you're  
23 dealing with round numbers. You sit down, don't do it in a  
24 couple of days, but you see what -- you know, what time you  
25 take. We set a schedule. We get a mediator. Matter of



1 fact, your Honor, in another case our firm had recently,  
2 recommended -- and we had Judge Graves, and we get it done,  
3 but it's not going to work if you piecemeal it.

4 As to the suggestion over the stipulated facts, I  
5 think if you read the actual language of the joint statement  
6 that was filed in January, it suggests their real intent.  
7 With respect to Mr. Willems, again, I was there. I put that  
8 language together. The intent was if we can agree -- I mean  
9 your Honor is going to need facts to make a ruling on the law  
10 for every one of the claims. That's an absolute. You're  
11 either going to get the facts -- and I think the questions  
12 you were asking are quite relevant. You're either going to  
13 get the facts by stipulation or by hearing or by affidavits  
14 of some sort, and if we don't agree on what those facts are  
15 and we file competing affidavits, the only way you're going  
16 to have to determine which facts are true and not is by  
17 having a hearing. It's the only way it's going to get done.  
18 What we were suggesting in the stipulated -- in the joint  
19 statement filed in January was we're going to work to get to  
20 the stipulated facts on those which we think we can. In my  
21 honest assessment, again, having been at this case since the  
22 beginning, I think that there's a potential of getting with  
23 some stipulated facts on maybe three of them, but as to the  
24 others, there are factual disputes, Judge. And we can  
25 litigate and file four and five series of briefs on each

1 claim for the three issues that we may agree on stipulated  
2 facts to, but then what are we going to do with the others?  
3 So after we have that briefing for those, we've got to have  
4 evidentiary hearings, and then even once you get beyond the  
5 briefings on the merits say with number three and say that's  
6 one of the ones I think may be stipulated facts there is a  
7 possibility of us reaching agreement, so say if you make a  
8 ruling and you rule in our favor that the claim has merit,  
9 well, in that case you've still got to determine the damages.  
10 So even for the claims which the city is saying should have a  
11 threshold legal issue, there's still a need for either  
12 mediation or an evidentiary hearing, and that claim, in  
13 particular, involves about 80-some employees who were denied  
14 overtime and holiday pay and so forth and so on, so either  
15 we're going to agree on what the damages are -- and that's,  
16 again, using their scheme of going through the threshold  
17 legal issues first, stipulating facts, having four and five,  
18 six years of briefs, you coming to a ruling, and by now we're  
19 on what, October, November, maybe, 2016 sometime. Then we've  
20 got to still decide damages. So, Judge, you know, I fear  
21 that the city's process is going to take us -- not only is it  
22 a cherry pick, in my opinion, but it's going to take us  
23 months or years out having to deal with these claims, and I  
24 think, again, that I would at least, before we do that -- I'm  
25 not saying we won't have to do it. Before we do it, I would,

1 I guess, ask your Honor to put us at one other effort in  
2 mediation and with all of them, not just with some but with  
3 all.

4 I don't know that I have much more to add, but I'd  
5 be happy to -- on the -- as to -- the only -- there was a  
6 comment made about the abstention order. It's true that  
7 he -- the judge said what he said. You could read the order.  
8 He did say that --

9 THE COURT: I did read it.

10 MR. MACK: -- yeah -- abstention wasn't appropriate  
11 at this time. There are a couple of the issues that are  
12 unique to Michigan labor law, and what your Honor rules is  
13 going to potentially have an impact on that, so the reason we  
14 filed for the abstention is because, "A," we wanted to get to  
15 quick resolution, maybe everything being dealt with at once,  
16 and then, "B," with all respect to your Honor, I think that  
17 some of those unique labor law issues, which some of them  
18 haven't yet been ruled on by the courts because they're  
19 dealing with statutes that are just three, four years old,  
20 some two years old, ought to be first dealt with by the  
21 tribunal that's in place for those as opposed to this  
22 Honorable Court.

23 THE COURT: Well, you're starting to reargue the  
24 abstention motion.

25 MR. MACK: No.

1           THE COURT: Don't go there. I'm not going to  
2 revisit that.

3           MR. MACK: Okay.

4           THE COURT: I'm not going to revisit what Judge  
5 Rhodes ruled on that. He didn't say never to abstention. He  
6 said not now --

7           MR. MACK: Yes.

8           THE COURT: -- as I understand it, and, you know, I  
9 agree with that now. That's not to say that there may not  
10 come a point where I see issues later on after this is  
11 further developed and -- assuming no settlement and we're  
12 litigating or I see issues where I agree with what you just  
13 said, and so, yeah, I don't mean to say I'm closing the door  
14 forever on abstention regarding anything. I'm not saying  
15 that.

16          MR. MACK: No. I appreciate that, Judge.

17          THE COURT: We're not going to revisit that now,  
18 though.

19          MR. MACK: I appreciate that.

20          THE COURT: All right. Go on.

21          MR. MACK: I appreciate it. So that was, I think,  
22 unless you have questions, our position. Our request of this  
23 Honorable Court would be to --

24          THE COURT: Well, you wanted to file -- as I recall,  
25 you were -- at the time of the January joint statement, you

1 were at a point where you wanted to file a surreply --

2 MR. MACK: Yes, yes.

3 THE COURT: -- to address some new issues that you  
4 said the city raised in reply briefs.

5 MR. MACK: Yes.

6 THE COURT: So I assume you're still at that point.  
7 If I don't agree with the city's proposed approach where we  
8 have sort of a new round of briefing that pulls everything  
9 together, you would still want a surreply; right?

10 MR. MACK: Yes. If your Honor does not agree that  
11 mediation of everything is, you know, potentially a route we  
12 should go, then, yes, we would still -- and the reason is  
13 because the initial objection filed in May of 2014 was, you  
14 know, very light on the facts and on the law, just basically  
15 was a generic objection. Our response to that objection was  
16 much more meaty dealing with the specific legal issues on  
17 each, and then the city's reply filed in -- you know, in  
18 October made all sorts of new claims which really properly  
19 should have been part of the original objection, so we've not  
20 yet had an opportunity before you to respond to those. To  
21 suggest that there's going to be yet another layer of, you  
22 know, not just cutting and pasting from the old objections  
23 and saying this is all one document but maybe adding new law,  
24 new argument, new theories, and then we -- I don't know when  
25 this is going to end. I just don't. So, yes, I think --

1 THE COURT: Well, if the city gets their way, it's  
2 going to end with the next round.

3 MR. MACK: Well, it would -- so then, as I  
4 understand what the city is suggesting is they would file a  
5 new supplemental brief. We would file a supplemental  
6 response. They would file a supplemental reply. And I think  
7 I'm still at kind of the question you were asking, Judge, at  
8 what point, assuming we do -- assuming we get the stipulated  
9 facts, we can either file those along with the briefs or  
10 separately. At what point, if we get to claims where we  
11 cannot -- like I think Claim 4, there's no way we're going to  
12 have stipulated facts. I just don't. Again, having been  
13 through this at the beginning, there's no way we're going to  
14 stipulate to facts on Claim 4. What do we do with Claim 4?  
15 Do we have an evidentiary hearing at that point? Do we hear  
16 the legal arguments on Claim 3 and hold on the evidentiary  
17 hearing for Claim 4? I just -- I don't know that there's any  
18 neat answer, and I think it complicates things greatly by  
19 adding a whole 'nother series of briefings.

20 THE COURT: One second.

21 MR. MACK: Sure.

22 THE COURT: All right. Anything else, Mr. Mack,  
23 before we hear a brief reply from Mr. Willems?

24 MR. MACK: No. I guess that I -- if your Honor is  
25 entertaining some sort of -- well, I guess I reserve just to

1 hear whatever your Honor is entertaining. Maybe I would have  
2 some suggestions to whatever the particular schedule is, but  
3 my initial request to you here is mediation for everything.

4 THE COURT: Have you talked to opposing counsel  
5 about that particular idea and they're not agreeable?

6 MR. MACK: They're agreeable to some. I mean  
7 everyone agrees that --

8 THE COURT: No, no. You said on everything.

9 MR. MACK: Yes. Everyone agrees that some of the  
10 claims ought to be mediated. I think you can't cherry pick  
11 some, but you ought to do all. I've even suggested  
12 bifurcating mediation. If they want to deal with the ones  
13 that everyone agrees ought to be mediated and then reserve  
14 for a second round afterwards, I think, frankly, the momentum  
15 built in the first round may cause cooler heads to prevail to  
16 where we can just, you know, get some resolution on the  
17 second round, but I haven't -- I think they're kind of  
18 entertaining that idea as well.

19 THE COURT: All right. One moment. All right.  
20 Thank you. Mr. Willems.

21 MR. WILLEMS: I don't know where the idea of cherry  
22 picking comes from. I mean this is something we're simply  
23 building on what was already agreed to in one form or  
24 another, and I have to say if he's -- if Mr. Mack is going to  
25 take credit for drafting the language, then I think we can

1 hold against him the fact that that language included all the  
2 qualifications and the right to add evidence and all of that,  
3 but that's not what we're talking about here.

4 THE COURT: Why don't you start by talking about  
5 mediation?

6 MR. WILLEMS: Okay.

7 THE COURT: You heard what he just said. What's the  
8 city's response?

9 MR. WILLEMS: The city's response on mediating all  
10 claims?

11 THE COURT: Um-hmm.

12 MR. WILLEMS: Our response is that we don't think  
13 it's -- it doesn't work for us to simply take all these  
14 claims, put them in a bag of money, shake it and see how much  
15 falls out. There are claims here that have no value, and I  
16 think on some of these, if pressed, you know, even Mr. Mack  
17 might concede that. I mean Claim Number 3, for example,  
18 that's a claim that not only, you know, is disposed of by the  
19 very MERC decision they're challenging, but that issue was  
20 litigated by the city, namely the issue of whether or not the  
21 suspension of the duty to bargain extends to Act 312  
22 proceedings, in other cases, and, you know, at the Circuit  
23 Court level the judges all agreed with the city's position on  
24 that. There's simply no authority that I'm aware of -- and I  
25 litigated these issues -- that they're going to be able to



1 bring to the table, so that's a claim that really needs to be  
2 addressed on a legal basis and disposed of. Claim Number 11  
3 on longevity, there's a claim where the -- where they filed a  
4 Department of Labor Claim, and the ALJ's found against them  
5 in two separate decisions that were then enforced by the  
6 Circuit Court. Now, if you bring these kinds of claims to  
7 mediation, you artificially invite inflating the total value  
8 of all the claims, and that's a process that, from the city's  
9 perspective, is not fair to the other creditors and certainly  
10 doesn't make sense, so we're not cherry picking. We're  
11 looking at those claims where we --

12 THE COURT: Well, are you, in part, saying that with  
13 respect to those claims, those two claims you just mentioned,  
14 3 and 11 --

15 MR. WILLEMS: As examples, yeah.

16 THE COURT: -- and perhaps others, that the city  
17 views them as so without merit and value that the city is  
18 just not willing to offer anything for them in a mediation?

19 MR. WILLEMS: Right, but, you know --

20 THE COURT: Is that what you're saying? So the  
21 mediation would be truly a waste of time?

22 MR. WILLEMS: Mediation would be a waste of time.

23 THE COURT: For sure.

24 MR. WILLEMS: And not only that, but there's a risk.  
25 You know, a mediator's job is to put a dollar value on

1 something. They're not going to pay much attention to legal  
2 arguments. They're going to assume that the parties want to  
3 come to the middle, as he said, even on claims where, you  
4 know, we really should have our hundred percent because  
5 there's no legal basis for the claim. If this was, you  
6 know -- well, I don't want to repeat myself.

7 THE COURT: All right. Go on.

8 MR. WILLEMS: So, you know, on timing, well, you  
9 know, even the claims objections deadline has been extended  
10 to December 8th. We proposed that this process be done by  
11 then. We think the threat of all this, you know, evidentiary  
12 hearing and all of that is really kind of overstated --  
13 extensively overstated because these are really large  
14 broadscale kinds of legal issues. You know, you can bring a  
15 lot of facts to bear, but 90 percent of them or even 99  
16 percent of them are not going to be material, and a dispute  
17 over an immaterial fact really isn't going to make any  
18 difference, you know, and I think the process that we've  
19 proposed will pretty quickly suss out what material facts are  
20 present or absent that allow you to make a decision. And we  
21 can, you know, bicker forever over this detail or that  
22 detail, but, you know, most of the -- most of the critical  
23 and material facts are going to be fairly easy to define and  
24 present to the Court, and a lot of them are to be found in  
25 the documents, you know. There's really no -- not much in

1 the way of testimonial or affidavit evidence that we believe  
2 is going to be required, and the documents are all self-  
3 authenticating. You know, we're not going to like all of  
4 them. Each party is going to have documents they don't like,  
5 you know, and they'd rather not see, but they're not going to  
6 be able to challenge them as inauthentic or anything like  
7 that, so --

8 THE COURT: Anything else?

9 MR. WILLEMS: That's it.

10 THE COURT: All right.

11 MR. WILLEMS: Thank you, your Honor.

12 THE COURT: All right. Thank you. I'm not going  
13 to -- first of all, I'm not going to adopt at this point the  
14 approach requested by Mr. Mack in today's hearing on behalf  
15 of AFSCME and the coalition that the Court order mediation of  
16 all parts of the claims that have not yet been resolved and  
17 just put off any action toward moving this dispute closer  
18 toward resolution via litigation. Mediation is a great  
19 thing, and I always encourage parties to mediate and to  
20 consider and use other -- possibly other forms of alternate  
21 dispute resolution. I certainly would never discourage that,  
22 but mediation was already tried with respect -- last fall  
23 with respect to these claims and claim objections, and I  
24 understand, I think, what Mr. Mack said about that in today's  
25 hearing. However, I'm not inclined to send everything back

1 to mediation and just hold off in moving this case -- these  
2 matters forward on a litigation front in any part in the  
3 meantime, so that's out.

4 Now, if the parties agree after -- some point after  
5 today's hearing that they want to do that or something like  
6 that or something approaching that, I certainly would  
7 encourage you to make that known, file a stipulation, submit  
8 a proposed order, tell me. Let me know. I'd be certainly  
9 happy to consider that, but not as matters are currently  
10 postured.

11 With respect to mediation and those subparts of the  
12 claims which the parties can agree can and should be mediated  
13 without delay and reach such an agreement, you know, either  
14 very soon or down the road at any point, I would certainly  
15 encourage the parties to discuss details regarding such  
16 proposed mediation, see if you can agree on them, including  
17 the mediator, procedures, issues to be mediated and the like,  
18 and, to the extent you can agree, to -- I would encourage you  
19 to file a stipulation, submit a proposed mediation order with  
20 details, and I'd certainly be happy to consider that. I  
21 would encourage that. In the meantime, we're going to tee  
22 this thing up for -- at least with respect to these subparts  
23 of the claim that the city has proposed in paragraph 13 of  
24 last week's joint statement to move forward on briefing on.  
25 The way I'm going to do this is I'm going to -- I'll prepare

1 and enter a scheduling order on this which says -- and I'm  
2 going to apply to this, these further proceedings, Rule 56 of  
3 the Federal Rules of Civil Procedure regarding summary  
4 judgment motions. That rule will apply, and what the parties  
5 are to file will be motions for summary judgment. Those  
6 motions for summary judgment must be -- and this is regarding  
7 subparts 3, 4, 5, 6, 8, 9, 11, and 19 of the AFSCME claim.

8 MR. MACK: Could you say that again, Judge? I  
9 didn't write it all --

10 THE COURT: The part numbers listed in paragraph 13  
11 of last week's joint statement, 3, 4, 5, 6, 8, 9, 11, and 19.  
12 The city must file a motion for summary judgment regarding --  
13 with respect to each of those subparts of the claim, separate  
14 motion, separate brief, briefs not to exceed 15 pages,  
15 opening brief, and support the motion as appropriate and  
16 permissible under Rule 56(c) of the Federal Rules of Civil  
17 Procedure. What that means, of course, is Rule 56(c)  
18 materials may be used to establish the material facts that  
19 the city deems relevant in support of its motions and may do  
20 that by either the use of affidavits, deposition testimony,  
21 if there is any in the record that -- or that can be put in  
22 the record, exhibits which are properly authenticated by  
23 affidavit, or by stipulation. And stipulations -- I would  
24 encourage the parties to try to agree on stipulations going  
25 into this, stipulations of fact and also stipulations as to

1 authenticity and, to the extent the parties can agree,  
2 admissibility for purposes of considering the material on  
3 ruling on the motions and cover as much of that by  
4 stipulation as the parties can with respect to each side's  
5 motions because the creditors whose claims are subject to the  
6 city's summary judgment motions may also file summary  
7 judgment motions of their own if they wish to. At the same  
8 time, they must file a brief with respect to each subissue,  
9 subclaim, responding to the city's summary judgment motion.  
10 Briefs for the claimants are also not to exceed 15 pages per  
11 motion, which means per subclaim. And I'll set deadlines for  
12 these filings in a minute. And then the city, as moving  
13 party, may file a reply in support of each motion for summary  
14 judgment not to exceed five pages per brief. And, you know,  
15 I will say the Court strongly disfavors waiting until a reply  
16 brief to put in a new argument. That sort of sandbagging  
17 will not be rewarded in this case, and I trust that the city  
18 and the city's attorneys will not do that or even try to do  
19 that. And I mention that only because of what's been said  
20 about AFSCME wanting an opportunity for a surreply and also  
21 because it does happen on occasion that reply briefs have a  
22 bunch of new arguments in them that really belong in the  
23 opening briefs, so I'll -- I don't think I need to say  
24 anything more on that subject here to these parties.

25           So I will -- I want to set deadlines for these

1 motions, response briefs, and reply briefs. The response  
2 briefs deadline for AFSCME and the coalition will be the same  
3 date as the deadline for any summary judgment -- cross-motion  
4 for summary judgment that they decide to file. The city has  
5 proposed July 31 in the joint statement filed last week for  
6 filing supplemental objections. I'll make July 31 the  
7 deadline for filing the city's summary judgment motions.  
8 That's a Friday. Now, Mr. Mack, you wanted some input, I  
9 think, into scheduling --

10 MR. MACK: Yes.

11 THE COURT: -- if I went down this path, so let me  
12 give you that chance.

13 MR. MACK: Thank you, Judge.

14 THE COURT: Given July 31 as the date by which the  
15 city will be filing its motions and briefs, what deadline do  
16 you want for the creditors to have to file responses and any  
17 cross-motions for summary judgment?

18 MR. MACK: Yes, Judge. What's proposed in paragraph  
19 13 is the same amount of time -- I'm not -- let me find where  
20 that's -- no -- sorry; Paragraph 15 -- forgive me -- with a  
21 similar time frame for AFSCME to respond to each supplemental  
22 objection. I'm assuming that is a similar time from --

23 THE COURT: Just tell me what you want.

24 MR. MACK: I would suggest that. I would also  
25 suggest, your Honor, that in a Rule 56(c) motion practice,

1 typically there's been discovery which has happened  
2 beforehand. And as I read the rules, they provide us, as the  
3 creditor, with the right to some form of discovery. Now,  
4 what's complicated about that is I don't know exactly -- I  
5 have a sense, but I don't know exactly what their affidavit  
6 is going to say, who they're going to use for affidavits or  
7 what discovery may be necessary, but certainly the ability to  
8 cross-examine affiants that they present would be something  
9 important for us to have, and our joint statement filed in  
10 January preserves all rights that may be allowable under the  
11 rules and regulations with this Court, so we don't want to  
12 foreclose our right to discovery. I mean obviously if your  
13 Honor doesn't think there's an issue of fact, that may impact  
14 the right to an evidentiary hearing, but certainly the  
15 ability to cross-examine affiants or test the authenticity of  
16 documents that they may present is something that we'd like  
17 to do depending on what's presented.

18 THE COURT: Well, I acknowledge that just now was  
19 the first mention anybody has made when I mentioned Rule 56,  
20 subrule 56, but having said that, I'll also say I don't think  
21 anybody has previously said anything about wanting leave to  
22 conduct discovery in connection with these claim objections  
23 and in particular --

24 MR. MACK: It's in there.

25 THE COURT: -- in particular with these threshold



1 issues, so-called threshold issues on these particular  
2 subparts of the claim that I'm talking about here on these  
3 motions, so I'm not going to grant leave to conduct discovery  
4 at this point with respect to these claim objections. That's  
5 not to say I won't do that in the future if need be at some  
6 point, and I do -- just would remind you that you have  
7 available to you provisions of Rule 56(d) of Rule 56 if you  
8 believe that it is important or essential to your ability to  
9 respond to the city -- any of the city's summary judgment  
10 motions to obtain specified discovery, so, anyway, having  
11 said that, what -- how much time after July 31, Mr. Mack, do  
12 you want for the creditors -- claiming creditors here to file  
13 their responses to the city's motions and their briefs and  
14 any cross-motions?

15 MR. MACK: I'm getting my calendar out now.

16 THE COURT: Sure.

17 MR. MACK: I think the idea of the city's comment  
18 was a similar time frame. That's about a two-month time  
19 frame, so I would suggest the same, I suppose. I mean given  
20 the fact that we've got to respond to --

21 THE COURT: So you want till the end of September  
22 basically?

23 MR. MACK: Yes.

24 THE COURT: All right. September 30, 2015. The  
25 city's reply briefs -- you said in paragraph 15 the joint

1 statement, 30 days. What do you want, Mr. Willems?

2 MR. WILLEMS: The reply brief? Thirty days is  
3 acceptable, your Honor.

4 THE COURT: So end of October?

5 MR. WILLEMS: Sounds good.

6 THE COURT: October 30, 2015. That's a Friday.  
7 Now, when all this stuff is filed, we're going to need to  
8 have a hearing. I'm sure I'll want to have a hearing, and  
9 we'll set a hearing, but I'm going to wait and see what gets  
10 filed and have a chance to review it before I notice it for a  
11 particular hearing date, so -- and I'll pick probably a  
12 Wednesday afternoon where there's nothing else before me but  
13 these motions to do this so that it's just you guys and  
14 you've got hopefully plenty of time for the argument, and  
15 that is an oral argument. It's not an evidentiary hearing.  
16 I would make known in advance before ever setting an  
17 evidentiary hearing if something is going to be an  
18 evidentiary hearing. This is a -- I'm talking about an oral  
19 argument basically hearing on these motions. So the hearing  
20 date is to be determined on these.

21 MR. MACK: Judge, may I ask --

22 THE COURT: Yeah.

23 MR. MACK: Building into this schedule, as  
24 indicated, we would be reserving our right to request  
25 discovery as appropriate. Would we build in a deadline for

1 the unions to move for discovery on particular issues? I  
2 mean at this juncture, as stated, I don't know exactly what  
3 they're going to present. We will know by July 31st, and --

4 THE COURT: What sort of deadline do you want for  
5 that?

6 MR. MACK: I'm thinking -- well, it depends.

7 THE COURT: Thirty days after the motions are filed?  
8 Is that enough?

9 MR. MACK: Sure. But if it's 30 days for us to  
10 request can we have discovery or 30 days to request  
11 discovery, if you're indicating that there should be a basis  
12 for us to, in fact, have it, then --

13 THE COURT: Thirty days to request leave to conduct  
14 discovery regarding specified issues to enable you to  
15 properly fully respond to the motions.

16 MR. MACK: I won't need 30 days to request leave. I  
17 can do that in two weeks.

18 THE COURT: Okay.

19 MR. MACK: So if -- once I get there --

20 THE COURT: Sounds like you're already planning to  
21 do it, but --

22 MR. MACK: For some of them, I don't know. I  
23 mean --

24 THE COURT: Yeah.

25 MR. MACK: Based on our conversations, for some of

1     them, I do think we will.

2             THE COURT: All right. Two weeks after July 31 is  
3     August 14, so August 14, 2015, will be -- I'll set that as a  
4     deadline for the creditors to file either a request or a  
5     stipulation if you can get agreement from the city granting  
6     the creditors leave to conduct discovery regarding specified  
7     matters relevant to the city's motions. Does that work?

8             MR. WILLEMS: I'm going to object to that, your  
9     Honor. It's going to take him two minutes to two days to  
10    turn around and tell me he wants discovery.

11            THE COURT: Your objection is overruled. Does that  
12    work for you, Mr. Mack?

13            MR. MACK: It does.

14            THE COURT: All right. Anything else you want to  
15    say, Mr. Mack?

16            MR. MACK: Other than the fact that the reason  
17    discovery wasn't addressed before is because of the way we  
18    contemplated joint statement of facts, stipulated facts, is  
19    that we wouldn't need discovery because we would agree on the  
20    facts as presented, and so --

21            THE COURT: I still am hoping you'll do that.

22            MR. MACK: And we very well may. Given the fact  
23    that there's now a brief due, you know, maybe that will for  
24    the three that I think are possible to do that in, we can  
25    have that conversation, but that's why discovery hasn't been

1 mentioned heretofore because we had been --

2 THE COURT: All right. All right.

3 MR. MACK: -- planning on stipulated facts.

4 THE COURT: Okay.

5 MR. MACK: Thank you, Judge.

6 THE COURT: So I'm going to wrestle this order to  
7 the ground and prepare it and enter it reflecting the further  
8 proceedings that I just described, and we'll go from there.  
9 That's it for today on these matters. Thank you.

10 MR. MACK: Thank you.

11 MR. WILLEMS: Thank you, your Honor.

12 THE COURT: Okay. That leaves one motion yet to be  
13 heard today, and that's the City of Detroit's motion  
14 regarding the Detroit Police Lieutenants and Sergeants  
15 Association state actions and related matters. The motion  
16 is -- the title of the motion is too long for me to read, but  
17 it's Docket Number 9250 -- 9523, and we'll hear that now.

18 MR. RAIMI: May I proceed, your Honor?

19 THE COURT: Yes, please.

20 MR. RAIMI: Thank you, your Honor. May it please  
21 the Court, my name is Charles Raimi. I'm the deputy  
22 corporation counsel for the City of Detroit. The DPLSA in  
23 state court filings seeks to compel the city to provide  
24 healthcare to certain city retirees, specifically those  
25 married to an active DPLSA member, and I'll refer to those

1 individuals as retiree spouses. This is the city's motion  
2 asking the Court to find that DPLSA's state court filings  
3 violate the plan of adjustment and should be dismissed, and  
4 we also seek an injunction against further violations.

5 As this Court is well-aware, the city exited  
6 bankruptcy last December when the plan of adjustment became  
7 effective. The city's balance sheet has been greatly  
8 improved, and Judge Rhodes found the plan of adjustment to be  
9 feasible, but there's a huge gulf between feasible and  
10 successful, and turning feasible into successful is going to  
11 take hard work, diligence, and courage to protect the gains  
12 achieved under the plan of adjustment and turn those into  
13 tangible benefits for the citizens of the city.

14 Your Honor, under the plan of adjustment, the city  
15 funded the retiree health VEBAs with \$450 million in new B  
16 notes. Those VEBAs and the funding provided by the city is  
17 specifically for the purpose of providing support and funding  
18 for healthcare for city retirees, including the spouse  
19 retirees that are at issue in this motion. That's why the  
20 city paid that money. And that funding, your Honor, was made  
21 on the express condition the city had no further  
22 responsibility to any city retiree to provide retiree  
23 healthcare. DPLSA now seeks to upend those provisions of the  
24 plan of adjustment. They want to siphon dollars out of the  
25 city's general fund, money that's desperately needed for

1 basic city services, and use that money for a special deal  
2 for the retiree spouses married to DPLSA members. These  
3 sorts of special deals, your Honor, are exactly what led the  
4 city into bankruptcy in the first place. DPLSA argues  
5 they're entitled or they seek a state forum to, quote,  
6 interpret and enforce its collective bargaining agreement,  
7 the CBA, but there's nothing in the CBA to interpret or  
8 enforce. There's nothing in the CBA that even addresses  
9 retiree spouse healthcare let alone purports to compel the  
10 city to provide it. And, in fact, the CBA, your Honor,  
11 really provides no details at all about the healthcare  
12 available to DPLSA members. There's nothing in the CBA about  
13 the benefits or the specific coverages. Instead, what the  
14 CBA does, your Honor, is it incorporates by reference the  
15 city medical plan document. Your Honor, that document --  
16 it's about 30 pages long. At great expense, that medical  
17 plan document was mailed out to each and every city employee  
18 during open enrollment in the fall of 2014. And, of course,  
19 the purpose of that was to give city employees, including  
20 DPLSA members, information -- basic information about  
21 coverages and benefits available, so what's key here, your  
22 Honor, is that the medical plan document prominently  
23 emphasizes in crystal clear language the plan of adjustment's  
24 prohibition on retiree spouses receiving city-provided  
25 healthcare, and that's at page 6 of the medical plan document

1 that's been provided to the Court.

2 THE COURT: This is Exhibit 6-B to the city's  
3 motion; right?

4 MR. RAIMI: Yes. That's correct. And it's on  
5 page --

6 THE COURT: Entitled "2014 City of Detroit Active  
7 Employee Benefits"?

8 MR. RAIMI: Yes. On page 6, your Honor -- I believe  
9 it's actually in two places on page 6 of that document  
10 that --

11 THE COURT: Page 6 is a table of contents.

12 MR. RAIMI: No.

13 THE COURT: Oh, I see. I see. Never mind.

14 MR. RAIMI: Yeah.

15 THE COURT: Yeah. All right. Hold on.

16 MR. RAIMI: And in two places --

17 THE COURT: Yeah, yeah. Those are the provisions  
18 you quoted in your brief.

19 MR. RAIMI: That's correct, your Honor.

20 THE COURT: Yeah. Okay. I see.

21 MR. RAIMI: Your Honor, the city's position is that  
22 even if there was no medical plan document, DPLSA's claim  
23 would be barred by the plan of adjustment and its unambiguous  
24 language saying that the city's contributions to funding the  
25 VEBA were the only monies the city had to spend on retiree



1 healthcare, but the fact is --

2 THE COURT: And that's based on this provision on  
3 page 43 of the confirmed plan, I guess? You quote that in  
4 your pages 1 to 2 of your brief.

5 MR. RAIMI: Yes. It's actually page 43 of the  
6 confirmed plan. It refers to a funding for the Detroit  
7 general VEBA of 218 million in new B notes and funding to the  
8 police and fire VEBA of 232 million in new B notes, and then  
9 there's a Section C that says no further responsibility,  
10 which makes clear that the city has no further  
11 responsibility.

12 THE COURT: And the first sentence of C is -- I  
13 think you're relying on that where it says, "From and after  
14 the effective date, the city shall have no further  
15 responsibility to provide retiree healthcare or any other  
16 retiree welfare benefits."

17 MR. RAIMI: Right. That's correct.

18 THE COURT: All right. And so you're saying that's  
19 conclusive?

20 MR. RAIMI: I believe that's conclusive, but the  
21 fact that this is also incorporated into the medical plan  
22 document, that same prohibition, coupled with the fact that  
23 the CBA expressly incorporates the medical plan document by  
24 reference --

25 THE COURT: How does it do that?

1 MR. RAIMI: If the Court has the --

2 THE COURT: I was a little unclear on the link  
3 there.

4 MR. RAIMI: If the Court has the CBA, the collective  
5 bargaining agreement --

6 THE COURT: It's Exhibit 6-A to your motion. I do  
7 have it in front of me.

8 MR. RAIMI: Yes. If the Court turns to page 48 --

9 THE COURT: I see it.

10 MR. RAIMI: -- and sub A, the first sentence, reads,  
11 "During the term of this agreement, employees will be  
12 eligible to participate in the group medical, prescription  
13 drug, dental, and vision plans," quote, medical plans offered  
14 by the cities, and those medical plans are what are embodied  
15 in that medical plan document that I referenced earlier. And  
16 then if you turn then to sub E of 43 on page 51, the first  
17 sentence in sub E says, "Except as provided in this article,"  
18 and there is nothing to the contrary in the article, "the  
19 extent of coverage under the city's medical plans will be  
20 governed by the terms and conditions set forth in the  
21 applicable medical plans offered by the city during the term  
22 of this agreement." So when the medical plan document was  
23 mailed to each city employee at the time of open enrollment,  
24 that allowed the employees to get a summary of the available  
25 benefits. There's two different providers. There's HAP,

1 there's Blue Cross that you can choose from. And that same  
2 medical document, plan document, that described the benefits  
3 also provides at page 6 no coverage for retiree spouses.

4 THE COURT: Again, this is -- you're talking about  
5 Exhibit 6-B to your motion?

6 MR. RAIMI: Right, the medical --

7 THE COURT: Yeah.

8 MR. RAIMI: Yeah.

9 THE COURT: I guess what I was asking is what  
10 specifically in the collective bargaining agreement says that  
11 that document, Exhibit 6-B, that document is the medical  
12 plans or the document which states what the medical plans  
13 are, in other words, that ties it in -- that ties that  
14 document to the collective bargaining agreement's reference  
15 to medical plans --

16 MR. RAIMI: Well, I think that --

17 THE COURT: -- the medical plans offered by the  
18 city?

19 MR. RAIMI: Well, that's the only document by which  
20 the city's medical plans are offered. That's the only  
21 document. And we have -- when the question was raised in  
22 DPLSA's response, we did provide the Court with the affidavit  
23 of Michael Hall to authenticate the fact that that medical  
24 plan document is, in fact, a document that goes out to the  
25 employees for open enrollment. That is the document by which

1 employees are advised as to their choices of benefits and  
2 medical providers. It's that document. There is no other  
3 document, so when --

4 THE COURT: Where is this affidavit of Michael Hall  
5 in the record?

6 MR. RAIMI: It's in the reply brief, your Honor.

7 THE COURT: I didn't see your reply brief. When did  
8 you file that?

9 ATTORNEY: Friday. I can give you the docket  
10 number.

11 MR. RAIMI: It was filed last Thursday, wasn't it?

12 ATTORNEY: Last Thursday, yeah.

13 MR. RAIMI: It was filed last Thursday.

14 THE COURT: Well, I'm sorry. I missed it. I was  
15 looking for a reply brief and wondering why --

16 ATTORNEY: 98 --

17 THE COURT: -- it wasn't there, and I didn't see it.

18 ATTORNEY: 9855.

19 MR. RAIMI: Counsel says 98-55.

20 ATTORNEY: 9855.

21 MR. RAIMI: 98 -- Docket Number 98 --

22 ATTORNEY: Docket number.

23 MR. RAIMI: -- 9855.

24 THE COURT: All right. Hold on. Hold on.

25 MR. RAIMI: So we did --

1 THE COURT: Just a minute.

2 MR. RAIMI: I was actually quite surprised to see  
3 DPLSA even question the medical plan document because, as I  
4 said, it went out by the mail to every employee, but just to  
5 cover that base in our reply brief, we included the  
6 declaration of Mr. Hall, the city's labor relations director,  
7 and he authenticated that as the medical plan document.

8 THE COURT: I see the document, and I'm sorry I  
9 missed it. I was looking for it and didn't find it, and so I  
10 have not read your reply brief or its exhibits. I'll  
11 certainly do that before I rule on this motion. So I see the  
12 declaration of Michael Hall you've just referred to of May 6,  
13 2015, and it looks like you got another -- well, you got a  
14 copy of the 2015 City of Detroit active employee benefits  
15 document attached to that, which is what the next year's  
16 version of what's your Exhibit 6-B to the motion, the 2014  
17 one.

18 MR. RAIMI: That's correct. And actually it was  
19 that 2015 document that went out in fall of 2014, but the  
20 provisions on retiree spouse --

21 THE COURT: Oh, it is. Is that what Mr. Hall says?

22 MR. RAIMI: Yes.

23 THE COURT: All right.

24 MR. RAIMI: The provisions on -- that prohibit  
25 coverage of retiree spouses are the same in 2014 and 2015

1 documents, so the language on page 6 that we looked at  
2 earlier is the same.

3 THE COURT: Okay. Thanks. Go ahead.

4 MR. RAIMI: So I hope I was clear in responding to  
5 your Honor on the -- when the CBA, the collective bargaining  
6 agreement, makes reference to the city medical plans, that  
7 is, in fact, reference to that medical plan document, and  
8 that is how that gets incorporated into the CBA. But, again,  
9 there's nothing in the CBA that in any way, shape, or form  
10 purports to allow or require the city to provide coverage for  
11 retiree spouses, and on that basis alone the DPLSA argument  
12 fails. It's barred by the plan of adjustment.

13 Your Honor, I'd just like to close on an issue of  
14 the jurisdiction which was raised by the DPLSA, and, again,  
15 they want a state court forum to what they say is to  
16 interpret and enforce the CBA. And, again, our position is  
17 there's nothing in the CBA to interpret or enforce, and their  
18 argument is barred by the plan of adjustment and the medical  
19 plan document. But on this issue of jurisdiction, this Court  
20 faced a similar question just a few months ago, and that,  
21 your Honor, was a dispute involving an Open Meetings Act  
22 case. This was when Judge Rhodes was still presiding over  
23 this case. And plaintiff in that case, your Honor, was  
24 trying to get public disclosure of transcripts of closed city  
25 council hearings, hearings that have been closed under

1 provisions of the Open Meeting Act. The plaintiff challenged  
2 the closure of these sessions and asked that the transcripts  
3 be publicly disclosed. The city removed the Open Meetings  
4 Act case to this Court, and the plaintiff argued that this  
5 Court should not hear the Open Meetings Act case, in fact,  
6 didn't have jurisdiction. Plaintiff said that the Open  
7 Meetings Act case raised only questions of state law that  
8 should be heard in state court. The city argued, and this  
9 Court agreed, that a state court judge unfamiliar with the  
10 bankruptcy would not be in a position to appreciate the harm  
11 that could result to the city's efforts to successfully exit  
12 bankruptcy, and so it would be improper for a state court  
13 judge to review those transcripts, and, rather, the  
14 bankruptcy judge was the appropriate forum to do that. This  
15 Court agreed with that. Your Honor, in this case, DPLSA  
16 wants this dispute to be decided by --

17 THE COURT: Was that decided before or after  
18 confirmation?

19 MR. RAIMI: Before.

20 THE COURT: You must -- it looks like you cite that  
21 in your reply brief.

22 MR. RAIMI: Yes, we do.

23 THE COURT: So I'll be able to find it from there.

24 MR. RAIMI: Oh, yes. There were also closed --  
25 there were also sealed decisions.

1           THE COURT: Before? Did you say before  
2 confirmation?

3           MR. RAIMI: Yes.

4           THE COURT: Okay.

5           MR. RAIMI: Yeah.

6           THE COURT: All right.

7           MR. RAIMI: It was -- yeah.

8           THE COURT: So it didn't deal with interpreting  
9 these retention of jurisdiction provisions under the  
10 confirmed plan?

11           MR. RAIMI: It did not, but I think the reasoning --  
12 obviously we think the retention of jurisdiction provisions  
13 under the plan are actually stronger than what we were  
14 dealing with at that time, but I think the logic is the same,  
15 that these sorts of issues that attack the plan of adjustment  
16 need to be decided by this Court, who is familiar with the  
17 plan of adjustment and understands what an attack on the plan  
18 of adjustment could do to the city's trying to successfully  
19 exit from bankruptcy, so we think the logic is the same. And  
20 obviously we've cited the jurisdictional provisions in our  
21 briefs, and we think those are more than adequate to cover  
22 this situation, but we thought that the Open Meetings Act  
23 case was at least instructive on this issue.

24           THE COURT: Well, I assume part of your argument is  
25 that if the Court finds and agrees with the city that the



1 state actions that were filed by the association, the DPLSA,  
2 that are the subject of your motion, if they are enjoined by  
3 the confirmed plan, they --

4 MR. RAIMI: Yes.

5 THE COURT: -- violate the injunction of the  
6 confirmed plan and they seek relief that is barred by the  
7 confirmed plan, as the city argues, then your view of the  
8 retention of jurisdiction provisions in the confirmed plan is  
9 that the Court -- this Court has -- is the Court that has  
10 jurisdiction and authority to decide that issue on the merits  
11 and, if it agrees with the city, to enjoin the actions.

12 MR. RAIMI: Exactly.

13 THE COURT: And if the Court, hypothetically  
14 speaking, were to rule that what the state actions are  
15 seeking is not barred by or inconsistent with the confirmed  
16 plan but, rather, is seeking a -- enforcement of the  
17 collective bargaining agreement and what the association says  
18 that agreement means and what rights that provides, then is  
19 it your view that this retention of jurisdiction provision  
20 that the association relies heavily on does or does not  
21 apply? And that's the provision that says that the Court  
22 retains jurisdiction. It's B, to confirm the maturity date  
23 and terms as written of the collective bargaining agreements,  
24 et cetera, and then it says in parentheses it being  
25 understood that the enforcement, interpretation, and

1 resolution of disputes of the terms of the contract shall  
2 proceed under applicable state law.

3 MR. RAIMI: Well, I have great difficulty even  
4 understanding what provision of the CBA would invoke that.  
5 Our position is there's nothing in the CBA to interpret or  
6 enforce in this case.

7 THE COURT: But isn't the -- aren't the state  
8 actions based solely on the terms of the CBA and what the  
9 association says that that document means?

10 MR. RAIMI: Without citing anything in the CBA, yes,  
11 they do cite the CBA, but they don't explain what in there  
12 supports their position or let alone purports to overrule the  
13 plan of adjustment language, but you are right. I view that  
14 language of retention of jurisdiction, your Honor, in this  
15 way. There are thousands or millions of labor disputes that  
16 arise all the time, grievances over working conditions,  
17 grievances over firings, and those sorts of things, your  
18 Honor, are clearly under that jurisdictional provision not  
19 for this Court. They're for the state procedures, but that's  
20 your typical -- you know, probably 99 percent of your labor  
21 issues.

22 THE COURT: Okay. So you're going to tell me how  
23 this dispute is different.

24 MR. RAIMI: This dispute is different because it's a  
25 direct attack on the plan of adjustment.

1 THE COURT: Because -- at least the city says  
2 because it's inconsistent with and barred by the plan.

3 MR. RAIMI: Yes.

4 THE COURT: Right? Okay.

5 MR. RAIMI: Yeah.

6 THE COURT: All right.

7 MR. RAIMI: So it's a completely different  
8 situation. If somebody has a grievance because their hours  
9 were cut, that has nothing to do with the plan of adjustment.  
10 Here they're saying despite the fact the city paid \$450  
11 million of new B notes to fund those health VEBAs and despite  
12 the fact the plan of adjustment says you have no further  
13 obligations, city, DPLSA says, "Oh, wait. Thank you for  
14 funding those VEBAs, but for these particular healthcare  
15 retirees, we want the city to pay," directly contrary to the  
16 plan of adjustment. Unless the Court has anything further,  
17 I'll reserve a brief rebuttal.

18 THE COURT: I don't think so. Thank you. All  
19 right. Ms. Patek.

20 MS. PATEK: Good afternoon, your Honor. Again,  
21 Barbara Patek on behalf of the Detroit Police --

22 THE COURT: I'm sorry. Patek. Pardon me.

23 MS. PATEK: Patek is probably the technically  
24 correct pronunciation.

25 THE COURT: I thought that's how you said it

1 earlier, so I was trying to --

2 MS. PATEK: No.

3 THE COURT: -- get that right.

4 MS. PATEK: If I were the shortstop for the Kansas  
5 City Royals, it would be the correct pronunciation of my last  
6 name.

7 THE COURT: Yeah. That's what I remember, but -- so  
8 what do you want me to call you?

9 MS. PATEK: Patek is fine.

10 THE COURT: Patek. All right. Thank you. Go  
11 ahead.

12 MS. PATEK: The city's motion here has to be denied,  
13 your Honor. There is no violation of a plan injunction  
14 because the benefit sought here is not a Class 12 OPEB  
15 benefit but is a benefit that the DPLSA bargained for for its  
16 members, and that is the right to have dependent spousal  
17 coverage whether that member's spouse is disabled, has a  
18 preexisting condition like cancer or diabetes or heart  
19 disease, or happens to be married to a retired city employee.  
20 The issues before the Court turn on basically two questions,  
21 and I think the first one the Court raised some questions in  
22 response to the city's argument, and that is what is the  
23 meaning of the word "plan" here. And there is, of course,  
24 the plan of adjustment, there is the city medical plan, and  
25 then there is this alleged city medical plan document, which

1 I will address in a moment. And then the second is whether  
2 the benefit being sought here is a retiree benefit or a  
3 benefit to which an active member is entitled, and I want to  
4 deal with that first question first.

5           Nothing in the treatment -- although the city cites  
6 repeatedly to the treatment of the Class 12 claims -- there  
7 is not a word in the plan that addresses the issue of a  
8 retiree who happens to be married to an active employee who,  
9 through his or her status as an active employee, has a right  
10 to dependent healthcare coverage. No further responsibility  
11 has to do with the city's rights or obligations to that  
12 retiree vis-a-vis his or her status as a retiree. Section A  
13 deals with the setup of the general VEBA, Section B deals  
14 with the setup of the Detroit Police and Fire VEBA, and  
15 Section C is the no further responsibility portion that I  
16 just referred to. The OPEB settlement --

17           THE COURT: You're talking about page 43 of the  
18 plan, I guess.

19           MS. PATEK: Yes. Correct, your Honor, 43 going on  
20 to page 44, and the treatment actually begins on page 42  
21 with, I think, the setup of the general VEBA. The OPEB  
22 settlement negotiated by the Retirees' Committee is Docket  
23 Number 8045, and that appears at pages 695 through 708 of  
24 that document. There is not a word in that document about  
25 what happens when a retiree spouse happens to be married to

1 an active employee who has certain rights pursuant to the  
2 collective bargaining agreement that covers his or her  
3 benefits.

4           The VEBA trust documents is another document that  
5 would come into play. That's Document 8045-1, and at pages  
6 11 through 56 of that document it talks about how those two  
7 trusts are going to be set up, who's going to sit on the  
8 boards, again, not a word about what happens if a city  
9 retiree also happens to be married and may have a separate --  
10 or whose spouse has a separate right to healthcare benefits  
11 vis-a-vis his or her status as an active employee.

12           Now, I want to diverge for a moment because I do  
13 want to comment a little bit on the suggestion that the  
14 DPLSA's pursuit of this issue is somehow a request for a  
15 special deal, and I think -- and, again, I know this Court  
16 post-effective date is handling these matters, and I'm sure  
17 the Court has reviewed the pleadings that came before, but  
18 nothing could be further from the truth. The DPLSA together  
19 with the three other Detroit public safety unions came into  
20 court from day one in this bankruptcy, and while they were  
21 challenging the city's eligibility, they supported the city's  
22 request for a stay as to all proceedings. They acknowledged  
23 the city's service delivery insolvency, and they actively  
24 sought to partner with the city in the bankruptcy proceedings  
25 and to be a constructive force in those proceedings.

1           Through the order for mediation that Judge Rhodes  
2 issued early in the case, which included negotiations between  
3 the Detroit public safety unions, including the DPLSA and the  
4 other public safety unions, the city was able to confirm a  
5 plan of adjustment that allowed it to exit bankruptcy with  
6 negotiated collective bargaining agreements with each of its  
7 four public safety unions, and I can't tell you -- I don't  
8 know the history enough, but you'd have to go back a lot of  
9 years to find the last time that happened without the benefit  
10 of an Act 312 arbitration or something like that, so this  
11 collective bargaining agreement was highly negotiated. The  
12 language -- the city's counsel cited to the retention of  
13 jurisdiction language. Again, that was language -- we're in  
14 Chapter 9. The city has enormous control over how things are  
15 going to be treated under the plan and what the Court -- you  
16 know, in a Chapter 11, for example, an issue as to what the  
17 collective bargaining agreement meant post-confirmation, that  
18 would absolutely not be something that would ever come before  
19 the Bankruptcy Court. Here the city had control over that  
20 issue, and it very deliberately chose language that expressly  
21 limited this Court's jurisdiction over the DPLSA collective  
22 bargaining agreement to confirming the maturity date and the  
23 terms as written of the collective bargaining agreement.

24           Now, we walked the Court in our brief through the  
25 different iterations of what's in the collective bargaining

1 agreement and what is in this document, but I do want to  
2 address the city's reply brief and some of the issues raised  
3 by that. Again, to reiterate, this definition of retiree  
4 spouse that shows up in the brief, it's a defined term in the  
5 brief. It is not a defined term anywhere in the plan of  
6 adjustment. What Mr. Hall actually said to, quote,  
7 authenticate the 2015 City of Detroit active employee  
8 benefits booklet was the following: "I am familiar with the  
9 document titled '2015 City of Detroit Active Employee  
10 Benefits.' That document is appended as Exhibit A and is  
11 referred to in this declaration as the 2015 plan document."  
12 Nowhere in his affidavit does Mr. Hall say that this is  
13 actually the medical plan document, and the City of Detroit  
14 active employee benefits booklet, which is an informational  
15 booklet, it's true, that was mailed to city employees,  
16 there's no question that these disclaimers -- and it may have  
17 been what the city wanted, but it's not what it negotiated  
18 about retiree eligibility for healthcare -- were included in  
19 it, but that same document specifically and repeatedly  
20 disclaims that it is a contract or that it is in any way  
21 contractual.

22 Now, with respect to what is -- what's actually in  
23 the collective bargaining agreement with regard to  
24 coverage --

25 THE COURT: Before you move into that --



1 MS. PATEK: Sure.

2 THE COURT: -- you read a minute ago -- you  
3 obviously were reading from paragraph 3 of Michael Hall's  
4 declaration --

5 MS. PATEK: Yes.

6 THE COURT: -- first sentence, and your point about  
7 that was what?

8 MS. PATEK: My point about that is the idea that  
9 this is the -- that this document -- that is, the 2015 City  
10 of Detroit active employee benefits informational booklet --  
11 is a, quote, plan document is simply inaccurate. I'm not  
12 sure that's an issue for this Court because I think it's an  
13 issue as to the interpretation of the collective bargaining  
14 agreement and, frankly, something that would be decided if  
15 this case were remanded to Administrative Law Judge Stern,  
16 but I do want to address this idea that the collective  
17 bargaining agreement is silent on the issue of spousal  
18 retiree healthcare, and I think that is simply inaccurate.

19 If you look at Section 43 of the DPLSA collective  
20 bargaining agreement, which is attached as -- I believe it's  
21 Exhibit -- is it 6-B?

22 THE COURT: 6-A.

23 MS. PATEK: 6-A.

24 THE COURT: Yeah.

25 MS. PATEK: The first paragraph talks about medical,

1 prescription drug, dental, and vision plans, medical plans,  
2 plural. There is more than one medical plan, and, in fact,  
3 there are two administered by the city and a third  
4 independently administered by an entity called C.O.P.S.  
5 Trust. So it then goes on to talk about --

6 THE COURT: Well, the phrase doesn't say medical  
7 plans, plural. It says medical, prescription drug, dental,  
8 and vision plans, plural.

9 MS. PATEK: Yeah. And then in paren medical plans  
10 it becomes a defined term. And then unless the --

11 THE COURT: Covering all of those things?

12 MS. PATEK: Yes.

13 THE COURT: Yeah.

14 MS. PATEK: Okay. So unless the parties mutually  
15 agree otherwise, the city's 2014 medical plan designs, quote,  
16 the medical plan designs, will remain in place during the  
17 terms of this agreement, so what are the medical plan  
18 designs? The medical plan designs, in fact, appear at pages  
19 35 and 36 of both the 2014 document attached to the city's  
20 original brief and the 2015 document which we attached to our  
21 brief and which is also appended to Mr. Hall's affidavit.  
22 And that at pages 35 and 36 talks about employee medical plan  
23 designs and consistent with the definition talks about  
24 deductibles, co-insurance --

25 MR. RAIMI: I'm sorry, counsel. I'm not following

1 where you are in the plan.

2 MS. PATEK: I'm sorry. I am on page 35 and 36 of  
3 the medical -- what the Hall affidavit refers to as the  
4 medical plan design.

5 MR. RAIMI: Yeah. Oh, I see.

6 MS. PATEK: And there is a reference in the medical  
7 plan's design to single versus family coverage. In page 35  
8 and 36 there's no specific reference to any entitlement to  
9 any kind of spousal coverage, but if you go back to the  
10 actual collective bargaining agreement, you know, there is  
11 the reference to the medical plan designs. There is actually  
12 a disclaimer under the -- with respect to the medical plan  
13 designs that says these describe the essential features of  
14 the above health plans, plural, in general terms. It is not  
15 intended to be a full description of coverage. All efforts  
16 have been made to correctly summarize the level of benefits.  
17 If an error has been made in the summary description, the  
18 certificate of coverage issued by the plan will supersede the  
19 document. Now --

20 THE COURT: That's on page what?

21 MS. PATEK: That's on page -- it's on page 35 of the  
22 active employee benefits document that's appended to the Mr.  
23 Hall affidavit to the city's reply brief, and I apologize. I  
24 don't have right at my hand here the actual -- let me see if  
25 I can find the -- that would -- in terms of the docket, it's

1 going to be at pages 9656-2, pages 38 and 39, I believe, or  
2 that may -- and that's as it was attached to our brief and as  
3 attached -- no. That's as attached to the -- yeah. 9855 --

4 THE COURT: Well, hold on. Hold on.

5 MS. PATEK: Okay. I'm going to --

6 THE COURT: Hold on. I'll look at your exhibit.  
7 It's Exhibit -- your Exhibit B, your brief, Exhibit B, I  
8 think?

9 MS. PATEK: Yes.

10 THE COURT: And that's page what?

11 MS. PATEK: It's 9656-2, page 38 of the -- and 39.

12 THE COURT: All right. So these pages have this  
13 chart entitled "Employee Medical Plan Design."

14 MS. PATEK: Correct.

15 THE COURT: And then you just read to me the  
16 disclaimer of sorts that's in smaller print at the bottom of  
17 that page 39.

18 MS. PATEK: Yes. And if these certificates of  
19 coverage, in fact, disclaimed or disavowed retiree spousal  
20 coverage, I assume that the city would have produced or  
21 provided them to the Court, but I want to go back to the  
22 collective bargaining agreement because it doesn't -- it  
23 refers to the plans, but there's another important provision.  
24 Again, sub E refers to the city medical plans as plural, and  
25 the terms and conditions set forth in the applicable medical

1 plans, which is received from the summary document, are the  
2 actual certificates of coverage. Now, if you look at the  
3 next page that's -- we're in the same section. It's actually  
4 the -- of the collective bargaining agreement, Section 43-I  
5 of the -- and this is at -- let me give you the page here.

6 THE COURT: Page 52?

7 MS. PATEK: It is 43 -- 48, 49 -- yes, page --  
8 actually, 52 of the collective bargaining agreement.

9 THE COURT: I see that page. Go ahead.

10 MS. PATEK: Okay. Surviving spouses and dependents.  
11 This is the only place that I have been able to identify that  
12 refers to actual spousal coverage. Current and future  
13 spouses and dependents of bargaining unit employees who are  
14 killed in the line of duty will be eligible to continue to  
15 participate in the city's hospitalization, medical insurance,  
16 optical and dental care plans on the same terms and  
17 conditions as active bargaining unit members. Now, again,  
18 this was a highly negotiated agreement over an extended  
19 period of time, and if, in fact, retiree spouses were not  
20 covered, it would have been very easy to say right there  
21 "except if the spouse happens -- also happens to be a City of  
22 Detroit retiree, in which case this provision does not  
23 apply." Similarly -- I mean the idea that the plan is silent  
24 because it talks about family coverage, which we can, I  
25 think, assume or interpret from Section 43-I includes spousal

1 coverage, the fact that there isn't a carveout, a contractual  
2 carveout for retiree -- spouses of active employees who  
3 happen to be retirees is, in and of itself, a very telling  
4 fact. At the end of the day -- and I want to step back from  
5 the weeds for a moment because --

6 THE COURT: Before you do that, where is the  
7 certificate of coverage that you referred to earlier.  
8 Neither side -- you don't have it?

9 MS. PATEK: I don't have it.

10 THE COURT: Well, okay. The city can respond when  
11 they get up --

12 MS. PATEK: Yeah.

13 THE COURT: -- about that. You don't have the  
14 certificates of coverage?

15 MS. PATEK: I do not have the certificates of  
16 coverage, and it's not been produced, and --

17 THE COURT: So you don't know what they say?

18 MS. PATEK: I don't know what they say.

19 THE COURT: Okay. So I interrupted you. Go on.

20 MS. PATEK: But I do want to step back from the  
21 weeds because the first issue raised by the city is that  
22 somehow the DPLSA has committed an assault on the plan of  
23 adjustment, and, first of all, with respect to the way things  
24 happened, I want to remind the Court that with respect --  
25 there were two state actions. The first went to MERC, and

1 Judge Stern said, "I'm not sure what to do because of the  
2 bankruptcy." And the second went to state court, and there  
3 was an action for a preliminary injunction. Upon -- you  
4 know, I can represent to the Court -- it's of record -- the  
5 injunction matter has been dismissed, and the DPLSA once --

6 THE COURT: Removed adversary proceeding.

7 MS. PATEK: It was the removed adversary proceeding,  
8 and the reason it was dismissed was there was a real concern  
9 when they first filed the MERC action as to what would be the  
10 availability of other coverage to these spouses who were  
11 being terminated from their city medical coverage. And it  
12 turns out to be really an issue of dollars and cents. It's  
13 costing them more money, but it's not at this moment in time  
14 an irreparable harm issue, so that action has been dismissed.

15 THE COURT: Does that mean it's costing them more  
16 because they are getting coverage under the VEBAs, but it  
17 costs them more?

18 MS. PATEK: All the VEBA gets them -- there's no  
19 coverage under the VEBA. All the VEBA gives somebody who is  
20 a retiree who used to get medical health coverage is a  
21 stipend that helps them pay for whatever --

22 THE COURT: So they go out and buy insurance?

23 MS. PATEK: They have to go off and buy insurance on  
24 their own, and --

25 THE COURT: So they get a subsidy of their

1 insurance, but they got to pay the rest -- for the rest of  
2 it?

3 MS. PATEK: Correct; correct. That's correct.

4 THE COURT: All right. And, again, coming back to  
5 this idea that there is anything in the plan that addresses  
6 what happens, this is not a benefit that is being sought by a  
7 retiree. This is somebody who just happens to also be a  
8 retiree who might have a separate claim but who -- the  
9 benefit doesn't come to them vis-a-vis their status as a  
10 retiree, and, in fact, the benefit belongs to the active  
11 employee, who is entitled to give his or her family medical  
12 coverage under the city's medical plan. So there is no  
13 assault on the plan here. The other question is whether or  
14 not -- you know, is it an assault on the plan or is every  
15 time there's going to be an issue of an interpretation of  
16 this collective bargaining agreement, is that going to come  
17 back before the Bankruptcy Court, or is this something that  
18 should be business as usual as a matter of state labor law?  
19 And I think I can say on behalf of the Lieutenants and  
20 Sergeants Associations -- I think that they are, you know,  
21 grateful for what came out of this Bankruptcy Court given  
22 what we started with at the beginning of the process, but I  
23 think it has to be said that this union together with other  
24 unions in the city were an active and constructive part of  
25 that process. And I think it -- we pointed out in a footnote



1 in our brief where the city wanted to incorporate a term of  
2 employment into the plan, its very able counsel knew how to  
3 do it. And that was done with pension, and all the unions  
4 had to sign a memorandum of understanding because we've got  
5 this ten-year injunction in the plan that says this is what's  
6 going to happen with your pension. And there were no holds  
7 barred and no punches pulled, and it's right there for  
8 everybody to see. That pension for the next ten years is a  
9 plan issue, and it's as plain as that. Active employee  
10 healthcare is not a plan issue. And I think it has to be  
11 understood that in order to -- or to suggest that there's  
12 some asking for a special deal, the police officers,  
13 lieutenants and sergeants, the command officers, the DPOA, I  
14 mean they came into this Court -- and the records show it. I  
15 mean the chief of police came in and said terrible working  
16 conditions, undermanned, underpaid, understaffed, and there  
17 was -- I don't want to say it was a sea change, but a lot of  
18 progress was made in the bankruptcy. And everybody talks  
19 about the grand bargain, and the grand bargain truly was  
20 miraculous, but one thing people don't talk about too much is  
21 that to mitigate those pension cuts and to help the city  
22 control its pension obligations, the lieutenants and  
23 sergeants, together with the other public safety unions, are  
24 taking all of the risk of any pension underfunding for the  
25 next ten years. And I think this Court can't underestimate

1 the difficulty faced by both the city and these unions in  
2 trying to negotiate an agreement. This is part of the  
3 collective bargaining agreement with the city. I think we've  
4 laid it out in our brief. The retention of jurisdiction made  
5 it very clear that, you know, this was the Court handing the  
6 reins back to the city, not on everything, not for things  
7 that are incorporated into the plan, but it's clearly stated  
8 to the extent that they assumed or adopted or incorporated  
9 these collective bargaining agreements that these would be  
10 matters of state law to be determined under state law, and to  
11 suggest that except for routine grievances that every time  
12 there's an issue with respect to the collective bargaining  
13 agreement that we're going to be back here before this Court,  
14 I just don't think that was anybody's intention. I don't  
15 think that's what the plan says, and I certainly don't think  
16 that's what Judge Rhodes intended. And, in fact, I'd have to  
17 go back and find the cite for the Court, but I -- he very  
18 clearly -- that was one of the issues he had at one of his  
19 early status conferences. He actually asked the city to look  
20 at the language in the plan because he wanted it clear that  
21 this was not -- you know, these were state law issues; that  
22 getting into what their collective bargaining rights were or  
23 were not was not going to be an issue for this Court post-  
24 confirmation, and everybody was going to have to stand on  
25 their own two feet, so I think we've got a constituency here

1 who is sensitive to the costs issues, sensitive to how skinny  
2 this plan is, doesn't want to upend it, but who have 12  
3 members who, you know, based upon the contract the city  
4 actually negotiated with them and everything we know about  
5 what the plan documents actually say, are entitled to have  
6 spousal coverage whether their spouse happens to be a retired  
7 city employee or not, and, you know --

8 THE COURT: Let me make sure I understand your  
9 argument as to why you contend that the collective bargaining  
10 agreement gives this right of retiree spouse health coverage  
11 that you're after here. You've cited paragraph 43-A, 43-I of  
12 the collective bargaining agreement.

13 MS. PATEK: Correct.

14 THE COURT: I think you've also pointed to the  
15 disclaimer --

16 MS. PATEK: The disclaimer.

17 THE COURT: -- in the plan booklet.

18 MS. PATEK: And importantly, the medical plan  
19 designs themselves -- there is -- I think the retiree -- the  
20 word "retiree" is a bit of a red herring because if, in fact,  
21 these plans or the collective bargaining agreement intended  
22 to exclude certain spouses from being able to get dependent  
23 healthcare coverage or being -- or actually exclude active  
24 members from having their spouses covered, it ought to have  
25 said it, and it didn't. And the idea that we're just talk --

1 when you put the word "retiree" in there, it's --

2 THE COURT: No. I'm trying to get at what is it you  
3 contend affirmatively supports the relief you're seeking in  
4 the state actions in the collective bargaining agreement or  
5 related documents?

6 MS. PATEK: What is it? Well, I've given the Court  
7 some things. It's a little bit beyond my pay grade because  
8 I'm not a labor lawyer, but the issue is how would you  
9 interpret this collective bargaining agreement? What would  
10 be the practice? Is the city entitled --

11 THE COURT: And the particular provisions are --

12 MS. PATEK: The particular --

13 THE COURT: -- 43-I you've cited.

14 MS. PATEK: 43-I, 43-A, the medical plan design  
15 pages of the City of Detroit active employee benefits  
16 information booklet, which was mailed and which was on line,  
17 and that talks about single coverage. It talks about family  
18 coverage. And I think --

19 THE COURT: So what particular provision in there  
20 are you relying on?

21 MS. PATEK: Well, if you talk about --

22 THE COURT: The reference to, for example --

23 MS. PATEK: The availability of single and family  
24 coverage.

25 THE COURT: Just the reference to family?

1 MS. PATEK: Yes.

2 THE COURT: Family coverage.

3 MS. PATEK: I think implicit in that is spousal  
4 coverage, and I think if you're going to exclude somebody in  
5 the family or who would be naturally considered a member of  
6 the family from coverage, that would be -- that would be  
7 something that you would want to indicate, and if you read  
8 43-I together with the medical plan design and the rest of  
9 the collective bargaining agreement, the idea that these 12  
10 spouses -- or these 12 active lieutenants and sergeants don't  
11 get the medical -- get the family medical coverage to which  
12 their collective bargaining agreement and the city medical  
13 plans entitle them because their spouses also happen to be  
14 retired city employees is just a -- it's a false construct.

15 THE COURT: Well, but this medical plan design  
16 document, chart, which includes a reference to family  
17 coverage, is in the same booklet that contains this language  
18 on page 6 that the city has been citing.

19 MS. PATEK: Well, the language on page 6 -- let me  
20 make sure it's on page 6 in the two --

21 THE COURT: So your response to that language is  
22 what then?

23 MS. PATEK: Our response to that language -- and I  
24 just want to see if it's on page 6 in the -- no. Okay. Yes.  
25 No duplicate medical. That may be something that the city

1 wanted. This made this way -- it made its way into this  
2 document in 2013 when we were still under city employment  
3 terms and where there were threats that if you don't reach  
4 agreement with us, we're going to impose whatever terms that  
5 we want on you. The document that includes the no duplicate  
6 medical coverage language specifically says -- and if the  
7 Court looks at -- let me make sure it's paginated. I think  
8 it's actually the first page because the cover page -- to all  
9 City of Detroit employees, and if you look at the last  
10 paragraph -- it's the first full page -- the City of Detroit  
11 employee healthcare plan options booklet is intended to be an  
12 easy to read summary guide for city employees. It is not a  
13 contract. The statement contained in this booklet regarding  
14 eligibility for coverage applied generally to all city  
15 employees; however, these statements are not intended to  
16 replace or supersede any city code provisions, city council  
17 resolutions, or language in labor agreements governing  
18 healthcare or life insurance benefits, and if --

19 THE COURT: I'm sorry. You're on what page of the  
20 booklet?

21 MS. PATEK: The first page of the -- if you --  
22 there's a cover sheet, and then the first page to all City of  
23 Detroit employees.

24 THE COURT: I see that, yes.

25 MS. PATEK: Last paragraph. And right in bold in

1 the middle, it is not a contract.

2 THE COURT: I'm looking at a different document.  
3 I'm looking at the 2014 document.

4 MS. PATEK: It's not in the 2014 document because --  
5 and I'm not sure --

6 THE COURT: Okay.

7 MS. PATEK: I'm not sure how that was pieced  
8 together, but part of that document is retiree and part of it  
9 is active, and that may have simply been the way it went out,  
10 but --

11 THE COURT: Okay. So you're saying -- you're citing  
12 to the 2015 document.

13 MS. PATEK: Yes, which would be the operative --

14 THE COURT: All right.

15 MS. PATEK: -- document under the terms of the  
16 current collective bargaining agreements which were ratified  
17 in November of this year.

18 THE COURT: Okay. So anything else in the  
19 collective bargaining agreement that supports the relief  
20 you're seeking?

21 MS. PATEK: Let me consult with my --

22 THE COURT: All right.

23 MS. PATEK: -- smarter half here. Your Honor, it  
24 may be quicker, with the Court's permission, if Mr. Sudnick  
25 can answer this question because he -- as labor counsel, he

1 is far more conversant --

2 THE COURT: You have to stick to the question --

3 MS. PATEK: Yeah.

4 THE COURT: -- that I asked.

5 MS. PATEK: Yeah.

6 THE COURT: I just want to know everything that your  
7 side contends in the collective bargaining agreement supports  
8 the --

9 MS. SUDNICK: Good afternoon.

10 THE COURT: -- relief you're seeking.

11 MR. SUDNICK: Good afternoon, your Honor. Peter  
12 Sudnick.

13 THE COURT: Excuse me. Excuse me.

14 MR. SUDNICK: Oh, I'm sorry.

15 THE COURT: I wasn't finished talking.

16 MR. SUDNICK: I'm sorry, your Honor.

17 THE COURT: I'll say it again. All I want to know  
18 is I want a list -- make sure I've got a complete list of  
19 everything that your side contends in the collective  
20 bargaining agreement supports the relief you're seeking.  
21 That's what I want to know, so go ahead.

22 MR. SUDNICK: Okay. Specifically, your Honor, first  
23 thing I want to draw your attention to, on page 49 of the  
24 collective bargaining agreement -- that's Article 43 -- the  
25 hospitalization section, paragraph B --



1 THE COURT: Hold it. Page 43?

2 MR. SUDNICK: 49. I'm sorry.

3 THE COURT: I'm sorry. 49. I see page 49.

4 MR. SUDNICK: Paragraph B.

5 THE COURT: Yes.

6 MR. SUDNICK: And in there, that very first  
7 sentence, it talks about the coverage tier selected by the  
8 employee. Coverage tier means this. You can choose single  
9 coverage. You can choose two-person coverage, meaning the  
10 coverage for your spouse, or you can choose family coverage.  
11 Those are the three tiers.

12 THE COURT: How do we know that? How do we know  
13 that?

14 MR. SUDNICK: I've been doing this for 35 years.  
15 These are the typical words we use in collective bargaining  
16 agreements when we talk about tier coverage. If you talk to  
17 a representative from HAP, Blue Cross, or anywhere, tier  
18 coverage means single, two-person, or family coverage.

19 THE COURT: Tier is not defined expressly then in  
20 there; is that right?

21 MR. SUDNICK: Not other than by the word itself.

22 THE COURT: Okay. Go ahead.

23 MR. SUDNICK: Okay. And as a result of that -- and  
24 I -- this particular benefit in the collective bargaining  
25 agreement is not new, your Honor. This has been in here for

1 decades, and the employee's spouse, whether retired from the  
2 City of Detroit or not, has been covered for decades.

3 THE COURT: I've asked you to focus on the language  
4 of the CBA.

5 MR. SUDNICK: I am.

6 THE COURT: All right.

7 MR. SUDNICK: And I --

8 THE COURT: Continue. What other language in the  
9 CBA?

10 MR. SUDNICK: Okay. That's the tier coverage,  
11 always been there. Employees. Okay. The other language we  
12 have an apparent dispute on where it says "medical plans."  
13 The medical plans --

14 THE COURT: And where are you referring to?

15 MR. SUDNICK: That is in the first paragraph of  
16 paragraph A.

17 THE COURT: 43-A on page 48?

18 MR. SUDNICK: Yes. City says medical plans means  
19 this informational document. It does not. Medical plans  
20 means the plan that is provided by the provider, whether it's  
21 Blue Cross, whether it's HAP or whatever. That is the  
22 medical plan. It is self-serving for them to use --

23 THE COURT: How do we know that?

24 MR. SUDNICK: Again, I was at the -- I was the one  
25 who conducted these discussions and negotiations with the

1 city. Medical plans --

2 THE COURT: Well, I'm not asking for parol evidence.

3 MR. SUDNICK: No.

4 THE COURT: I'm asking for language in the CBA  
5 itself. How do we know that from the language of the CBA?  
6 Do we know that from the language of the CBA?

7 MR. SUDNICK: That medical plans refers to the  
8 actual medical plans?

9 THE COURT: Yeah.

10 MR. SUDNICK: I guess that's a question of  
11 interpretation, your Honor.

12 THE COURT: All right. What else in the CBA do you  
13 want to point to?

14 MR. SUDNICK: I think -- and the medical plan  
15 designs, again, is something we rely on because --

16 THE COURT: That's at 43-A also?

17 MR. SUDNICK: That's already been referenced.

18 THE COURT: Yeah. Right.

19 MR. SUDNICK: And I think those and --

20 THE COURT: Okay.

21 MR. SUDNICK: -- also the language in paragraph B-2,  
22 small (a), small (b), where it talks about for the Health  
23 Alliance Plan or the Blue Cross/Blue Shield plan, those are  
24 the plans, not the informational document supplied by the  
25 city, but what you see here in our collective bargaining

1 agreement, the HAP plan, the Blue Cross plan.

2 THE COURT: All right. Anything anywhere else?

3 MR. SUDNICK: No. That would cover --

4 THE COURT: Okay.

5 MR. SUDNICK: -- the collective bargaining  
6 agreement, your Honor.

7 THE COURT: All right. Thank you. All right.  
8 Anything further before we hear a reply from the city, Ms.  
9 Patek?

10 MS. PATEK: Yeah. And, your Honor, just to sort of  
11 close the loop on that, this is absolutely consistent with  
12 the active employee benefits, the last sentence under the  
13 medical plan design. The complete plans are described in the  
14 certificate of coverage issued by each --

15 THE COURT: Wait. I'm sorry. Start over. Where  
16 are you?

17 MS. PATEK: It would be the medical plan design  
18 page. It's 35, I think, in the 2015 --

19 THE COURT: So we're in the booklet?

20 MS. PATEK: Yes. If you want to know what the plans  
21 are --

22 THE COURT: Medical plan design page. I see it. Go  
23 ahead.

24 MS. PATEK: Last sentence at the bottom of the page,  
25 "The complete plans are described in the certificate of

1 coverage issued by each plan and are available on request to  
2 all interested persons." Those are the operative documents  
3 that define levels of coverage, tiers of coverage, all the  
4 things that are referred to in the collective bargaining  
5 agreement, and there is nothing anywhere either in the plan  
6 of adjustment or in the collective bargaining -- well,  
7 nothing in the plan of adjustment that eliminates the right  
8 of an active employee to have his or her spouse covered if he  
9 or she happens to be also a city retiree. And in terms of  
10 what the collective bargaining agreement itself says, again,  
11 I would refer respectfully the Court to the retention of  
12 jurisdiction issues. There may be some things here that are  
13 terms of art and would be more appropriately dealt with in  
14 a -- the labor context, but -- and I would say, at minimum,  
15 to complete this record, we ought to have before the Court --  
16 and I apologize that it didn't occur to me to get, but we  
17 ought to have those certificates of coverage in the record,  
18 and then we could see what the actual plan documents say  
19 about retiree healthcare or spousal coverage and whether  
20 there is actually an exclusion if that spouse of an active  
21 employee happens also to be a city retiree.

22 THE COURT: All right. Thank you. Mr. Raimi.

23 MR. RAIMI: Thank you, your Honor. It's been a long  
24 day, and I appreciate the Court's patience. I'll try to be  
25 brief and hit the main points here.

1 THE COURT: I'm not hurrying you.

2 MR. RAIMI: What's that?

3 THE COURT: I'm not rushing you. Go ahead.

4 MR. RAIMI: Thank you. Let me clear up one  
5 preliminary issue in terms of what counsel was just talking  
6 about on the page, page 35 of the medical plan document, that  
7 has the chart.

8 THE COURT: Well, I'm looking in the 2014 booklet.

9 MR. RAIMI: Either one. Either one that --

10 THE COURT: Yeah. I'm looking at Exhibit 6-B --

11 MR. RAIMI: Yeah. And it has the language.

12 THE COURT: -- the 2014 one. They're the same, I  
13 think, in --

14 MR. RAIMI: Yeah, I think they are.

15 THE COURT: -- what you're going to say, so go on.

16 MR. RAIMI: And it says -- the last sentence in that  
17 small type says, "The complete plans are described in the  
18 certificate of coverage issued by each plan and are available  
19 on request to all interested parties," so what these are,  
20 your Honor -- I mean if they want -- if DPLSA thought those  
21 were important, any one of their members could have requested  
22 them at any time. They simply provide details as to the  
23 benefits, so where the chart says "hospital care, number of  
24 days of care," this is a general description of those  
25 benefits. The benefit certificates are hundreds of pages,

1 and they go into excruciating detail about the specific  
2 benefits that are available under specific circumstances.  
3 They address ambulance care. They address chiropractic care.  
4 They address all kinds of detailed things that you can't  
5 address in a chart, so that's the answer to that.

6 THE COURT: What do they address about spouse  
7 coverage?

8 MR. RAIMI: Well, I'm sure they don't address it at  
9 all.

10 THE COURT: They don't describe what family coverage  
11 is?

12 MR. RAIMI: Well, I don't -- they certainly don't  
13 say that a retired spouse of the City of Detroit is entitled  
14 to coverage under their active -- under their active employee  
15 coverage. They certainly don't say that. I'm sure they --  
16 what they --

17 THE COURT: Do they say that -- just speak in  
18 general terms of spouses being covered by family coverage?

19 MR. RAIMI: I think --

20 THE COURT: I would assume they would.

21 MR. RAIMI: I think what they do is refer back to  
22 the city documents for coverage issues. Those are benefit  
23 certificates. They're not coverage documents. And that's  
24 why -- they're not coverage documents. They refer back to  
25 the city documents, and in this case that would mean starting

1 with the plan of adjustment, which, in my view, is the  
2 overriding document here, the plan of adjustment.

3 THE COURT: Well, how many certificates of coverage  
4 are there? Three?

5 MR. RAIMI: Oh, there's many. Blue Cross has  
6 several, I believe. HAP probably has several.

7 THE COURT: Each hundreds of pages?

8 MR. RAIMI: I'm sure there are many pages, probably  
9 over a hundred, yeah.

10 THE COURT: Well, should I allow the association  
11 through Ms. Patek here to have access to these before I make  
12 a ruling?

13 MR. RAIMI: Of course, that's up to the Court, but,  
14 as I say, they could have --

15 THE COURT: Does the city have them handy?

16 MR. RAIMI: I can get them from Blue Cross just like  
17 anybody could. They're available upon request. I mean if  
18 DPLSA thought that they were of some importance, I suppose  
19 they could have gotten them.

20 THE COURT: Well, it sounds like they now think they  
21 might be important, so if need be you can get them fairly  
22 promptly --

23 MR. RAIMI: Yeah. I'm sure --

24 THE COURT: -- make them available to Ms. Patek to  
25 inspect and review and copy?



1 MR. RAIMI: I'm sure I can.

2 THE COURT: All right. Go on. What else did you  
3 want to say?

4 MR. RAIMI: Ms. Patek referred to the declaration of  
5 Michael Hall, and I know the Court hasn't had an opportunity  
6 to read it yet, but it specifically states that the 2015 plan  
7 document, referring to the booklet, governs the determination  
8 of which individuals are eligible for coverage under the  
9 city's healthcare plan.

10 THE COURT: That's paragraph 5?

11 MR. RAIMI: Five. The 2015 plan document also  
12 provides a general summary of benefits and advises  
13 participants that they can obtain a full description of the  
14 applicable benefits from benefit certificates issued by Blue  
15 Cross and HAP, which are available upon request. So the  
16 booklet is the coverage document, and that's consistent, your  
17 Honor, with Section 43-E of the collective bargaining  
18 agreement. Except as provided in this article, and there is  
19 nothing -- we all agree there's nothing addressing retiree  
20 spouses -- the extent of coverage under the city's medical  
21 plans will be governed by the terms and condition set forth  
22 in the applicable medical plans. Your Honor, I guess I've  
23 learned by now that there is no contract, no document that  
24 can ever be drafted that can't be subject to second-guessing  
25 or attack, but when the only document given to employees, the

1 only document provided is this document that says consistent  
2 with the plan of adjustment, retiree spouses are not eligible  
3 for coverage under a city plan, I really don't know what more  
4 you can do than that. Evidently DPLSA's counsel would have  
5 had the city address every conceivable possibility in the  
6 plan of adjustment, but I think they're looking through the  
7 wrong end of the telescope. When you look at the plan of  
8 adjustment, that key section -- and this is the -- this is  
9 the key document, page 43-C. From and after the effective  
10 date, the city shall -- has no further -- shall have no  
11 further responsibility to provide retiree healthcare. It  
12 doesn't say "except for a retiree who happens to be married  
13 to an active employee." It doesn't say that. I don't know  
14 how you could have made that clearer. I just don't. And  
15 there was -- that was the consideration. That was the  
16 consideration for the city funding the VEBAs with \$450  
17 million in new B notes. I just don't know how you can make  
18 it clearer. And then to have the document that goes out to  
19 every employee say consistent with the plan of adjustment --  
20 this is not just something that came out of the air, the page  
21 6 language about retiree spouses not eligible. That  
22 didn't -- you know, the city didn't make that up out of the  
23 air. It implements the plan of adjustment. I don't know how  
24 human beings could do more than that to make this issue  
25 clearer.

1           And one other point. I want the Court to understand  
2 the sequence of events here. The 2014 document that was  
3 attached as an exhibit to our original motion, that went  
4 out -- that went out in the fall of 2013 for the open  
5 enrollment for 2014. The collective bargaining agreement is  
6 dated November 6, 2014, so by the time this collective  
7 bargaining agreement was signed, your Honor, they had both  
8 the 2014 medical plan document and the 2015 medical plan  
9 document, both of which implement the plan of adjustment  
10 provision on no retiree healthcare, so I think when they say,  
11 well, there's nothing in something, there should be something  
12 more specific, they're just looking through the wrong end of  
13 the telescope. You have the plan of adjustment. You have  
14 that implemented by the document, this document, the medical  
15 plan document. You have nothing in the CBA to the contrary,  
16 as we've now clearly established, nothing, absolutely nothing  
17 in the CBA. So, again, I go back to where I started.  
18 There's nothing in the CBA to interpret or enforce. This is  
19 a naked attack on the plan of adjustment, and it's not just  
20 these 12 DPLSA members. There's hundreds of these retiree  
21 spouses throughout the city, and it's a multi-million dollar  
22 issue to the city.

23           THE COURT: What do you make of paragraph 43-I of  
24 the collective bargaining agreement, page 52, which Ms. Patek  
25 cited and read from? And I'll preface -- let me preface your

1 answer to that with a question. I assume that everybody  
2 agrees -- the city agrees that the plans -- the medical plans  
3 that these active members of the DPLSA have under the  
4 collective bargaining agreement as active members does  
5 provide as an option family coverage, which would cover a  
6 spouse of an active DPLSA employee in the city's view even as  
7 long as that spouse is not a city retiree.

8 MR. RAIMI: That's correct.

9 THE COURT: Do you agree?

10 MR. RAIMI: I agree with that.

11 THE COURT: Okay. So does 43-I -- is 43-I something  
12 that needs just to be read with that in mind, or what do you  
13 make of 43-I if something other than that?

14 MR. RAIMI: I just don't see that it has any  
15 relevance whatsoever. It talks about -- it doesn't talk  
16 about retiree spouses. It doesn't address retiree spouses  
17 whatsoever. It addresses surviving spouses but not retiree  
18 spouses.

19 THE COURT: All right. Anything else you'd like to  
20 say?

21 MR. RAIMI: No, your Honor. Thank you.

22 THE COURT: All right. One second. All right.  
23 Thank you, all. What I'm going to do here is -- as I  
24 mentioned during the hearing, I did not read the city's reply  
25 brief and its attachments before today's hearing. I did

1 manage to read during the hearing as both sides' attorneys  
2 pointed to provisions in the declaration of Michael Hall that  
3 was attached to the reply, some provisions of that, but I  
4 need to read that. In fairness to the city, I need to read  
5 their reply and its exhibit or exhibits. And then I do want  
6 to take a bit more time to think about the arguments made by  
7 the parties here both in their writings and in the hearing  
8 today and to think about this a bit more before I make a  
9 ruling, so I'm going to take this motion under advisement at  
10 this time. My plan at the moment is to issue a hopefully  
11 fairly brief written opinion ruling on -- and/or a ruling on  
12 the motion rather than to do some sort of bench opinion at a  
13 later date. If I change my mind and decide to issue a bench  
14 opinion, though, I'll give you notice of that. We'll have a  
15 notice date for that to occur. So for the time being, the  
16 motion is under advisement. Thank you.

17 MR. RAIMI: Thank you, your Honor.

18 THE COURT: I believe that concludes today's  
19 hearings on the City of Detroit case, so --

20 MR. RAIMI: Thank you, your Honor.

21 THE COURT: -- thank you, all.

22 MS. PATEK: Your Honor, before we break, may I --  
23 this issue of these certificates of coverage, given the  
24 importance of this issue, since we all agree that those are  
25 the actual plan documents, would the Court permit us to

1 enlarge the record by putting those into evidence? We're not  
2 going to ask you to read all, but we'll take responsibility  
3 for going through and pointing out -- if retiree spousal  
4 coverage isn't mentioned at all, I think that may mean one  
5 thing to one side and one to the other, but I think those are  
6 the plan documents, and --

7 THE COURT: I didn't choose -- I heard you say that  
8 at the end of your argument that you ought to have a chance  
9 to get that. I didn't choose to give you that, but I'll let  
10 the city respond to your request and consider that anew  
11 before I leave the bench today. Mr. Raimi.

12 MR. RAIMI: Your Honor, I guess my concern is that  
13 after all this briefing, the document so clearly says that  
14 these are available upon request, I just don't understand why  
15 DPLSA -- if they thought they were relevant, why didn't they  
16 get them? Any one of their members can simply call up Blue  
17 Cross and get that.

18 THE COURT: I take that as opposing the request that  
19 Ms. Patek has made, but I'm going to grant her request in  
20 this way. Ms. Patek is granted the limited right to  
21 discovery with respect to the motion. The right is limited  
22 to obtaining from the city inspection and copying of the  
23 certificates -- one second -- of coverage for the medical  
24 plan and after doing so may file a supplement to the  
25 association's objection to the motion with relevant -- or

1 with provisions of the certificates that the association  
2 contends are relevant and in the supplement a list of the  
3 specific provisions by section, page number, whatever it is  
4 that would cite to the provision without a further brief,  
5 without further argument, simply a list of citations to the  
6 documents and attaching a copy of the documents. The city  
7 then will have the opportunity -- may -- is not required but  
8 may file in response to that supplement a supplement to its  
9 motion which simply cites and attaches copies of any parts of  
10 the coverage certificates that the city contends are  
11 relevant, if any, or which the city thinks the Court should  
12 review, and this is in response to the provisions, if any,  
13 that the association cites in its supplement. Mr. Raimi, how  
14 quickly can Ms. Patek get a copy of these -- inspection of a  
15 copy of these certificates?

16 MR. RAIMI: I'm just not sure how fast Blue Cross  
17 moves on a request like this, so I'd like to have two weeks,  
18 if I could.

19 THE COURT: So, Ms. Patek, assuming that you'll have  
20 these in two weeks, I'll give you three weeks from today to  
21 file your supplement, June 17. And the city wants how long  
22 after June 17 to file any response to the supplement of the  
23 type I have described?

24 MR. RAIMI: A week should be sufficient, your Honor.

25 THE COURT: June 24. All right. So I amend what I

1 said earlier. The motions -- the motion will be deemed taken  
2 under advisement on June 24 -- well, June 25 after the  
3 supplements have been filed or the opportunity for doing so  
4 has passed. And so I'll reflect this in a short order that  
5 I'll file -- procedural order that I'll file regarding these  
6 motions. Probably file it tomorrow, and I'll prepare it.  
7 Thank you.

8 MR. RAIMI: Your Honor, is there a --

9 MS. PATEK: Thank you.

10 MR. RAIMI: Are we talking about five pages for this  
11 sort of little supplement?

12 THE COURT: A list of citations, however many pages  
13 it takes you.

14 MR. RAIMI: Okay.

15 THE COURT: You're just going to give me a list.  
16 Nobody is going to brief anything.

17 MR. RAIMI: Well --

18 THE COURT: That's what I said, citations only with  
19 attached copies. That's it. That's all these supplements  
20 are. Thank you.

21 THE CLERK: All rise. Court is adjourned.

22 (Proceedings concluded at 5:47 p.m.)



## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

June 4, 2015

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Lois Garrett